

IN THE
District Court of the United States,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
PETITIONER,

VS.

MOTION PICTURE PATENTS COM-
PANY et al., DEFENDANTS.

RECORD---VOLUME IV.

TESTIMONY OF WITNESSES FOR THE
DEFENDANTS.

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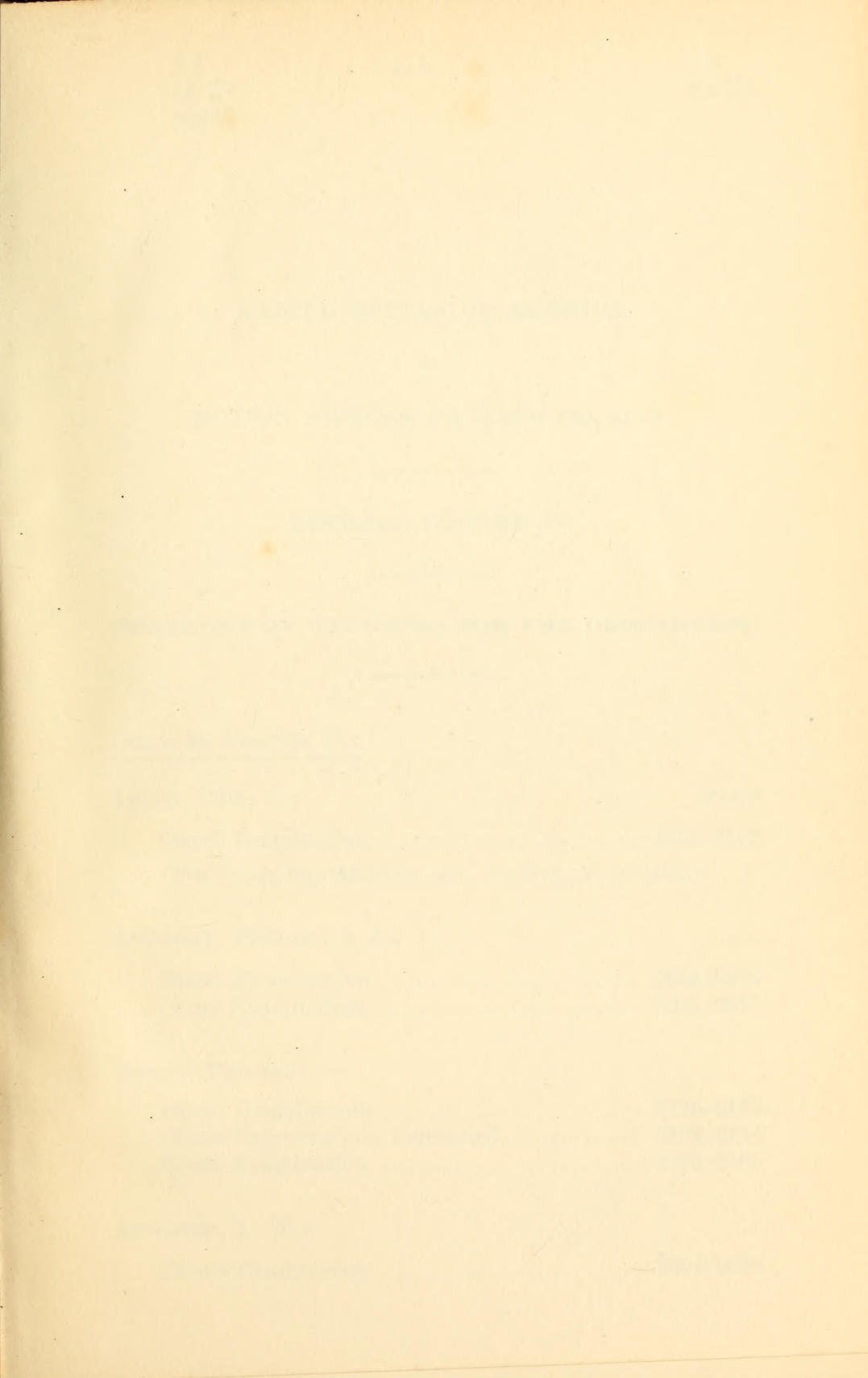
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UNITED STATES OF AMERICA

v.

MOTION PICTURE PATENTS CO. ET AL.

RECORD—VOLUME IV.

TESTIMONY OF WITNESSES FOR THE DEFENDANTS.

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1

Thereupon JAMES STUART BLACKTON, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged? A. Manufacturer of motion pictures.

Q. How long have you been a manufacturer of motion pictures? A. Since 1897.

2

Q. With what company or corporation are you connected at the present time? A. The Vitagraph Company of America.

Q. How long have you been connected with the Vitagraph Company of America? A. Since its inception.

Q. Are you a part owner of the company or the owner of stock in the company? A. I am a stockholder in the company.

Q. Are you an officer of the company? A. Vice-President and Secretary.

Q. Mr. Blackton, will you tell us when it was that you went into the motion picture business, and under what circumstances? A. Well, that is a long story, Mr. Kingsley. Do you want me to tell it all in detail, or how it all happened? I can tell you briefly that I was engaged after I left college as an artist and newspaper illustrator, magazine illustrator, and through that I became a cartoonist under Major Pond, who managed celebrities in those days, and he recognized in my work something similar to Thomas Nast, who had been a cartoonist in previous years, and he offered to manage me on lecture tours, and the first year I was under Major Pond's management, I think, was in 1895 or 1896, and in that way I became interested in the possibilities of the entertainment field, and about that time motion pictures first made their appearance, and in my capacity as a magazine writer and artist both—I used to write my own stories and illustrate them—I called on Mr. Edison and wrote an article about his Kinetoscope. This was before the projecting machine had made its appearance. It was just a little Vitascope, which you looked down into.

3

4

Mr. GROSVENOR: A peep-hole?

1 The Witness: Yes, sir. And I interviewed Mr. Edison,
and I drew some sketches in my sketch book, and he
was very much interested, and he said, "We are going
to show these little pictures up on a big screen very soon,
and I would like to have you do some of your cartoon
work before our camera," and I said I would be very glad
to do so, and we went out into a place called the
"Black Maria," and into a revolving studio, and I drew
a sketch of Mr. Edison on a large piece of paper, and
a sketch of William McKinley, and a sketch of Grover
2 Cleveland, three sketches, and they made a film of it
fifty feet in length, and that was one of the first
ten or twenty pictures they sold, or leased with their
Vitascope, and later on I saw myself on the screen drawing
these pictures; and that was the beginning of the realiza-
tion in my mind that there was a future in motion pic-
tures, and I became interested with a friend, who later
became a business associate, Mr. Albert Smith. We went
over to see Mr. Edison again, and to find out if we could
buy one of the machines, and we were told we could not
buy a Vitascope, that all the machines were leased on
3 State rights propositions, and we didn't have money
enough to buy State rights, but a very short time after
that the Edison Projecting Kinetoscope was put on the
market, and we purchased one of those, one of the very
earliest ones. Our machine was numbered "13." I re-
member it, because there was a superstition about it that
it would bring us good luck, and I think it did, and that is
how I got into the business, Mr. Kingsley.

Mr. GROSVENOR: When was this you bought the
Edison Projecting Kinetoscope?

4

The Witness: About 1897, I should say.

By Mr. KINGSLEY:

Q. Now, after 1897, how long was it before you went
into the business of manufacturing motion pictures? A.
I went into it shortly afterwards. We took this machine,
and changed it into a camera, and we used it for exhibition
purposes, and at the time we used it for taking pictures

we boxed it in and arranged it so it would take pictures, and we made a number of short films with it. 1

Q. Were these short films that you exhibited in those days on this Kinetoscope to which you have referred? A. Yes, sir.

Q. And at the beginning of your experience as a producer of motion pictures, were the films mostly short films?

A. Yes, sir, very short, in lengths of fifty and seventy-five feet.

Q. Did you subsequently build an establishment in Brooklyn for the production of motion pictures? A. Yes, considerably later than this period I have spoken of. 2

Q. Were you associated at that time with Mr. Rock and Mr. Smith? A. Yes, sir.

Q. What did you do at the beginning with respect to manufacturing motion pictures? Did you manufacture on a large scale or on a small scale? A. On a very small scale.

Q. Did you encounter any difficulties at the beginning of your experience as a producer of motion pictures, or some time subsequent, with respect to patent litigation? A. We encountered difficulty at the very outset, and subsequently. 3

Q. What was the character and class of the litigation, so far as you know, that you encountered? A. Mr. Smith and myself were sued by the Edison Company very shortly after we advertised our first films for sale.

Q. Do you know about what time that was? A. It was the year of the Spanish-American War, 1898, I think, or 1899. I am not sure about the date.

Q. Who sued you, Thomas A. Edison, Incorporated, or Thomas A. Edison? A. Yes, sir.

Q. And on what patent did he sue you, do you recall? A. I don't know the number, but it was on the camera patent. 4

Q. And what happened in that suit? A. We were notified that a temporary injunction was obtained against us, and the theatres wherein our films were being shown were notified that unless they ceased showing our films that they would also be sued. Our customers were written to.

Q. Did the fact that your customers were notified of the temporary injunction, and the possibility of their being

1 sued, have any effect on your business? A. Yes, sir, it caused us to lose our engagements in several theatres, Proctor's among them.

Mr. GROSVENOR: This was before 1902?

The Witness: Yes, sir.

By Mr. KINGSLEY:

Q. Subsequent to 1898, did you have any other litigation with the Edison people? A. We had litigation continuously up to 1908, yes, sir.

Q. Did you have litigation on the camera? A. Yes, sir, on the camera and the film patents, both.

Q. Were different lawsuits brought against you? A. Yes, sir.

Q. And by "you" I mean the Vitagraph Company of America? A. Yes, sir.

Q. And you and your associates? A. Yes, sir.

Q. Was more than one injunction issued against you? A. Yes.

3 Q. What was the character of the second injunction?

Mr. GROSVENOR: And the date, please.

The Witness: The second injunction, to the best of my recollection, was a permanent injunction, restraining us individually and as co-partners, our employees, agents, etc., perpetually and forever from dealing in or manufacturing motion pictures, cameras, films and everything connected with the business of motion pictures.

4 Mr. GROSVENOR: I object to the statement of the witness as to what the injunction prescribed as being an improper statement and hearsay, the proper evidence being the production of a copy of the decree in the case.

The Witness: We can produce a copy of this injunction, Mr. Kingsley.

Mr. KINGSLEY: Have you that copy with you?

The Witness: No, I have not.

1

Mr. GROSVENOR: What date was that?

The Witness: I don't remember.

By Mr. KINGSLEY:

Q. You don't recall the date of this injunction? A. No, I think it was in 1902.

Q. You do recall the purport of it, however? A. I rather think I do.

2

Q. Was it served upon you personally? A. Yes, sir.

Q. And upon your partners personally, so far as you know? A. Yes, sir. I remember it, because it had the effect of causing us to turn our entire business over into the hands of a relative of Mr. Smith, a brother-in-law, and causing us to remain physically away from our establishment for a considerable period.

Q. Who was the person to whom the plant was turned over at that time? A. Walter B. Arthur.

Mr. GROSVENOR: I object to all of this as immaterial, the witness having stated that this was in 1902. Was it not, witness?

3

The Witness: I think so. I am not positive about dates.

Mr. GROSVENOR: And, therefore, being at a time too remote to have any bearing on the issues in this suit.

By Mr. KINGSLEY:

4

Q. After this injunction, how long was it before you began making motion pictures again, openly? A. We commenced again upon the reissue of the Edison camera patent, I forget the number, but it is a historic patent.

Q. Do you remember the circumstances under which you commenced again? A. Yes; one of my partners, I forget which, brought a copy of the reissued patent into our office, and we thought it was another subpoena, or something of that kind, and upon examining it, we found—

1

Mr. GROSVENOR: I object to what the witness may have thought about it, the same being immaterial, any intelligent man being able to distinguish between a copy of a pleading and a copy of a letters patent.

By Mr. KINGSLEY:

2

Q. And upon examining it you found what, Mr. Blackton? A. We found that it was a copy of the reissued Edison patent, and we were informed by our attorneys that we were then free to disregard the former injunction and go ahead manufacturing films again, which we did.

Q. In other words, you went ahead under the reissued patent, taking your chances on future litigation? A. Yes, sir.

Q. Was there any future litigation? A. Yes, sir; almost immediately.

Q. And what did that consist of? A. That was a suit for infringement, instituted by the Edison Company, on the camera patent and the film patent.

3

Q. Do you know whether, at that time, they had sued any other manufacturers or producers? A. Yes, sir.

Q. Do you know the name of anyone else who was sued at that time? A. Yes, sir; they sued Mr. Lubin, at Philadelphia, Pathe Freres, Paley & Steiner, George Spoor, Selig, of Chicago, and a number of smaller concerns whose names I do not remember.

Q. Now, what became of the suit against the Biograph Company, under the reissued patent?

4

Mr. GROSVENOR: Which reissued patent, please?

Mr. KINGSLEY: Under the reissued patent to which you have just referred, Mr. Blackton.

The Witness: The reissued camera patent, you mean?

Mr. KINGSLEY: Yes.

The Witness: That dragged along for a period of three or four years.

By Mr. KINGSLEY :

1

Q. Did you have any other litigation during this period of three or four years? A. Yes, sir, we were sued by the Armat Company, and by the Biograph Company.

Q. And were you sued by them under patents connected with the motion picture art? A. Yes, sir.

Mr. GROSVENOR: That is objected to, as heretofore, on the ground that the dates should be stated.

By Mr. KINGSLEY :

2

Q. Are you able to state the dates of that suit, approximately? A. Well, it was between 1902 and 1904, I should say.

Q. Now, what impression did this litigation make upon you, with respect to the desirability of increasing your business or putting in more capital of your own or enlisting outside capital? A. Well, it had the obvious effect of deterring us entirely from making any great investment, because of having no great confidence in our business, and it caused us, at one time, to offer our business for sale to Lyman H. Howe.

3

Mr. GROSVENOR: I object to the last statement, because the same is immaterial and too remote, unless the witness states the date.

By Mr. KINGSLEY :

Q. About what time was it that you made this offer to Lyman H. Howe? A. That was probably in the year 1902 or 1903.

4

Mr. GROSVENOR: I make the same objection. It is too remote to be material.

By Mr. KINGSLEY :

Q. Now, from 1904 to 1907, were you engaged in producing motion pictures? A. Yes, sir.

Q. Did your business expand very much during those three years? A. No, not appreciably.

1 Q. Were you harassed by litigation during that period?

A. Yes, continually.

2 Q. When was it that you first discussed the possibility of obtaining a license from the owners of the camera, film and projecting machine patents or from a new company which might hold the patents, thus enabling you to proceed without fear of litigation? A. In the year 1907 I made a trip west, and on my return I stopped in Chicago and called on George Kleine, who was our agent for Vitagraph films. He was also the agent for the Edison films for Chicago, and the West. And we were then being very actively litigated
3 against by both Edison and Armat; and, I am not sure whether the Biograph Company suit had then been instituted, but I think not. I talked with Mr. Kleine about the situation. He was very desirous of continuing to sell our films, and I told him I didn't think we would be able to furnish him with film much longer. He also criticized the quality of our film, and compared the cheap scenery and properties in our pictures with the more splendid settings of the Pathe Freres films, and I explained to him that we dared not spend, and could not spend as much money in
4 making our films as the foreigners, who had no litigation to fear, and in the course of our conversation, Mr. Kleine asked me if I would not like to meet Mr. Spoor, and Mr. Selig, who were then being sued as we were, and together with Mr. Kleine and myself, talk over the situation and see if there was not a possibility of our getting a license from the Edison Company. Mr. Kleine, being the Edison agent, and being very well acquainted with them, stated that he felt sure if he were to make a special trip to Orange to see Mr. Edison, personally, that the state of affairs which was so grievous at that time, could be terminated. This was in
4 1907. We met that same day in the afternoon at Rector's in Chicago.

MR. GROSVENOR: What time of the year was that?

The Witness: In the Fall of 1907. At that meeting, or at that lunch, the first thought of getting immunity from litigation by acknowledging the validity of the Edison patent and getting a license was discussed, and I was delegated to come on East and talk with my partners and

talk with other manufacturers in the East and see if a meeting could be brought about. Mr. Kleine offered to give us all a banquet at the Republican Club in New York if such a meeting could be pulled off, and meanwhile, Mr. Kleine made a personal visit to Orange to see Mr. Gilmore, Mr. White, and Mr. Edison, and subsequent to that—that was about a month after my talk in Chicago, he wrote to us inviting us to a dinner at the Republican Club.

Mr. GROSVENOR: Who wrote you?

The Witness: Mr. Kleine, stating that at that dinner all the then well-known manufacturers and importers of films would be present, and also representatives of the Edison Company. We attended the dinner, and I must say, to our surprise, Mr. Gilmore, who had always been very vindictive against all infringers, as he called us, was there, and he was very pleasant to us, and we discussed there the possibility of the men around that table becoming Edison licensees, and that was the beginning of the formation of the Patents Company.

By Mr. KINGSLEY:

Q. Well, did you subsequently become an Edison licensee? A. We did.

Q. At that time was George Kleine an Edison licensee, at the time the Vitagraph Company became a licensee of the Edison Company? A. Yes, he was a licensee before that time. He was the agent for the Edison films.

Q. You say that George Kleine was an agent for the Edison film. Was he not also an agent for other films? A. Yes, sir.

Q. Now, after the Edison license agreement was prepared, did the Vitagraph Company become an Edison licensee? A. Yes, sir.

Q. And do you recall whether George Kleine became an Edison licensee? A. Yes, sir, he did.

Q. Now, are you preserving in your mind, Mr. Blackton, the distinction between an Edison licensee and a Patents Company licensee? A. Yes.

Q. I may state for your information, that George Kleine

1 was not an Edison licensee, but became a Patents Company licensee later on. A. I did not mean it in that sense, Mr. Kingsley. I meant that he must have been a licensee to sell Edison films, or he could not have handled their product.

Q. But, what I am referring to now, Mr. Blackton, is the fact that in 1908 a number of producers of motion pictures who had not been licensed by the Edison Company, were given licenses under what is known as the Edison License Agreement? A. Yes, I recollect now.

2 Q. And became Edison licensees? A. Yes, sir.

Q. And I am asking you whether George Kleine was one of those Edison licensees in 1908? A. No, sir, he was not one of the first licensees.

Q. Was the Biograph Company one of the first licensees in 1908? A. No, sir.

Q. So that George Kleine and the Biograph Company were, neither of them, Edison licensees in 1908? A. No.

Q. Did the negotiations to which you have referred occur in the latter part of 1907? A. I think so.

3 Q. When was the Edison license agreement entered into, was it in 1908? A. I believe it was.

Q. So that neither George Kleine nor the Biograph Company were Edison licensees in 1908? A. No, sir.

Q. Did the Vitagraph Company become a licensee of the Motion Picture Patents Company in the latter part of 1908? A. Yes, sir.

4 Q. During the time that you were an Edison licensee in 1908, did you have any experience with respect to litigation? I am referring to 1908, during the time you were an Edison licensee, and George Kleine and the Biograph Company were not Edison licensees? A. Yes, we were sued by the Armat Company, of Washington, and by the Biograph Company.

Q. Did the effect of this suit create any unrest—

MR. GROSVENOR: Objected to as too indefinite, unless the witness states what patents the suits were on.

The Witness: The Armat Company sued us on what is

known as the "shutter" patent. I don't know the number of it, but the patent which claims a greater period of rest than period of motion, and the only way in which we could get around that point was by using what was known as a fifty per cent. shutter, that is, we shut off only half the amount of light, and the film was shown half in obscurity and half in the light.

1

Mr. GROSVENOR: Are you talking about the Pross patent?

The Witness: No; I am talking about the Armat patent. The Armat patent was a shutter patent, as I stated—one having a greater period of rest than period of movement—and the only way to get around it was by using a certain kind of shutter, which gave a very imperfect exhibition, causing a great deal of flickering.

2

By Mr. KINGSLEY:

Q. And what was the other patent suit? A. The other suit was the Biograph Company's suit, and the principal patent on which they sued was the Latham patent.

3

Q. Do you recall making any complaints to the Edison people respecting this litigation? A. Yes, sir.

Q. What was the nature of the complaints you made? A. Why, we contended that we were paying royalties as an Edison licensee, and still we were being harassed by patent litigation from other sources.

Q. Did the Vitagraph Company subsequently become a Patents Company licensee? A. Yes, sir.

Q. Do you recall the occasion on December 18th, 1908, when the licensed producers of motion pictures signed the Patents Company license agreement? A. Yes, sir.

4

Q. Do you recall that there was present on that occasion an individual named Lodge, who is a witness in this case? A. I don't remember that he was there.

Q. Do you recall on that occasion any discussion on the part of anyone respecting the possibility of the formation of a rental exchange by the licensed producers similar to the General Film Company? A. No.

1 Q. Do you recall any such conversation on the part of any one— A. No.

Q. Or that you participated in any conversation with any one on that occasion relative to the possibility of the formation of a rental exchange by the licensed producers similar to the General Film Company, or the formation of a licensed rental exchange of any character? A. No, I recollect no conversation of that kind.

2 Q. Were you ever present at any other meeting or gathering of the licensed producers at which the witness Lodge was present? A. I can only recall one other.

Q. When was that? A. I cannot fix the date; it was subsequent to that.

Q. Would you say a short time subsequent? A. It was subsequent to the meeting at which the licenses were signed, of course.

3 Q. On that subsequent occasion, when you recall seeing the witness Lodge, and at a time when the other licensed producers or some of them were present, was there any conversation in which you participated, or which you overheard, either between you yourself and the witness Lodge, or between the witness Lodge and other persons present, or between other persons present not including Lodge, in which the possibility of the formation of a rental exchange similar to the General Film Company, or any other kind of a rental exchange, by the licensed producers, was discussed? A. No.

Q. When did you first know of the project to establish a rental exchange on the part of the licensed producers? A. I should say it was about a year after the formation of the Patents Company that such a subject was broached.

Q. Did this matter originate with you? A. No.

4 Q. Had you actively interested yourself in an exchange proposition prior to that time? A. No.

Q. Was this subject brought up by some one else? A. I presume so.

Q. And did you actively discuss it, or merely acquiesce in it? A. I did not personally actively discuss it.

Q. What were the reasons which induced you finally to favor the formation of the General Film Company? A. I thought that it would be very desirable, and the other manufacturers thought likewise, to establish one or two exchanges, which would replace some of the then existing exchanges

which were doing business, as we thought, to our detriment, and to the detriment of the industry, for the better securing of our money, and to serve the many and increasing number of customers better than they were being served. 1

Q. Had you heard complaints of the practices of the managers or owners of rental exchanges? A. Yes, sir.

Q. What were some of the complaints that were brought to your attention? A. Oh, there were repeated complaints of unfairness, of unfair competition, of the unbusinesslike methods used by men who were running exchanges at that time, discriminations, and the greatest cause of complaint, I believe, was from exchange managers who also owned theatres—that they would invariably use the films which they purchased in their own theatres first, and then rent them out to their customers, and there was a great deal of complaint in those days about using films after they were unfit for exhibition, so that people who went in to see a motion picture show were disgusted with it, and would come out and not go in again. The films were patched, torn, full of marks and scratches, and they were very unpleasant to look at. 2

Q. What is the life of a motion picture film in active use?

A. Anywhere from one month to six months, according to the number of times it is used. 3

Q. Do you recall an occasion in the latter part of 1911 when one William Fox called upon Albert E. Smith at the Vitagraph Company's establishment in Brooklyn? A. Yes.

Q. Do you and Mr. Smith occupy the same or adjacent offices? A. We occupy the same office.

Q. Did Mr. Smith and Mr. Fox have a conversation while you were in the office? A. Yes.

Q. Were you seated at your desk in the office during part of this conversation or all of it? A. During almost all of it. The room is about this size, and the desks are as far apart as they can be in a room of this size. 4

Q. Did you have occasion to notice anything with respect to that conversation? A. I noticed that Mr. Fox talked a great deal, and Mr. Smith talked very little.

Q. Were you told that the conversation was confidential? A. No.

Q. Was any attempt made, so far as you observed, to prevent you from hearing what was said? A. I could not help but hear it.

1 Q. Were you asked to leave the room because the conversation was confidential? A. No.

Q. Did you hear any pledge between the two to the effect that they would regard the conversation as confidential? A. None whatever.

Q. With what part of the work of producing motion pictures, at the present time, do you interest yourself principally? A. With the artistic end of the business. The production of the pictures and reading of, and sometimes the writing of plays, scenarios, and manuscripts.

2 Q. What proportion of the production of the Vitagraph Company is dramatic? A. I suppose about fifty or sixty per cent.

Q. And of what does the remaining fifty or forty per cent. consist? A. Comedies, travel subjects, educational and industrial.

Q. Do you differentiate between comedies and dramatic subjects? A. Oh, yes.

Q. But the comedy is in a broad sense dramatic, is it not? A. Yes.

3 Q. What percentage are travel scenes, in subjects? A. At the present time perhaps not more than five per cent. In fact, we have never made a specialty of travel views like some firms.

4 Q. Will you tell us what you are doing at the present time in respect to obtaining scenarios and dramatic copyrights, in order that you may produce motion picture plays? A. Yes, I have bought personally for the company within the past three months, plays and novels from such writers as Rex Beach, A. C. Gunter, George Randolph Chester, E. Phillips Oppenheim, Gouveneur Morris. I have made arrangements for the production on a royalty basis of Hall Caine's "The Christian," Marion Crawford's "In the Palace of the King," and a great number of other well known and important subjects and books.

Q. How do the prices range for these copyrights? A. A magazine writer of good name but not internationally known, commands from \$250 to \$500. We have recently purchased a great many magazine stories direct from Lippincott's and Pearson's Magazine, of which they owned the copyrights. We paid them from, as I say, \$100 to \$500. We paid for plays

like "Mr. Barnes of New York," which was bought a few weeks ago; "Mr. Potter of Texas;" "Miss Nobody of Nowhere,"—all of Gunter's novels we have purchased,—and we pay for them on an average of a thousand to fifteen hundred dollars apiece. 1

Mr. GROSVENOR: Mr. Blackton, let me ask you to bring with you for purposes of cross examination, copies of these two injunctions which you referred to on direct examination, and which you said you could produce. 2

WILLIAM BRANDT, the next witness called on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged, Mr. Brandt? A. I am in the motion picture exhibiting business.

Q. How long have you been in it? A. Almost four years. 3

Q. Where are you located at present? A. At 154 Clinton Street, this city.

Q. How long have you been at 154 Clinton Street? A. The entire time I have been in business.

Q. How large a theatre have you there? A. Two hundred and ninety-nine.

Q. From what exchange do you take motion pictures at the present time? A. The General Film Company.

Q. How long have you been taking pictures from the General Film Company? A. Eight months.

Q. Before you began taking motion pictures from the General Film Company, from what exchange or exchanges were you getting them? A. Well, practically every exchange in the city. That is, from every—from all exchanges. 4

Q. Had you gotten them at any time from the Greater New York Film Rental Company? A. Just for one week.

Q. Had you gotten them from independent exchanges? A. Yes, from the Universal and the Mutual, too.

Q. While you were getting your service from the unli-

1 censed exchanges, did you have any difficulty with respect to keeping a clear program? A. Yes; extremely difficult.

 Q. Did you find that your competitors frequently were showing on the same day practically the same program that you were showing? A. Very often.

 Q. Did you complain of this situation to the exchanges which were serving you? A. Yes, sir.

 Q. Did they remedy the situation? A. After a picture had been shown?

2 Q. No. Afterwards, did they so adjust things that you had no further occasion for complaint? A. Well, they said they would, but the fact that I went away from them showed that they did not.

 Q. After you began to take your service from the General Film Company, did you find any difference in this respect? A. Yes.

 Q. What was your experience in respect to keeping a clear service after you began to take a program from the General Film Company? A. Well, I practically had an exclusive service.

3 Q. So you had no difficulty with respect to your competitors in the immediate neighborhood showing the same films that you did on the same dates? A. No difficulty at all.

 Q. Have you found during the eight months that the General Film Company has been serving you, that it is giving you a reliable service? A. Yes.

 Q. Do you get satisfactory programs from it? A. Satisfactory.

 Q. Have you been able to advertise your programs in advance with the certainty that you could have the pictures in your theatres on the day advertised? A. They have never failed me.

4 Q. Did you have any difficulty in that respect in former times before you began to take pictures from the General Film Company? A. Quite often.

 Q. Have you ever had any special experience with respect to engaging a particular motion picture or motion picture play, advertising the same, and then finding that you were unable to present it, or that some competitor had been furnished with it just in advance of you, so that a portion of your patronage was lost to you? A. Yes, sir.

Q. Will you tell us of that experience? A. Why, I booked Madame Bernhardt, in Sappho, I believe it was either Sappho or some other name,—I don't just remember it,—and I spent quite a lot of money advertising it, and my competitor went to the same people, I understand, and he gave them \$10 more and he got it two days before I did, and took advantage of all of my advertising.

Q. Do you pick out pictures in advance at the present time? A. Yes, sir.

Q. Do you have any difficulty about doing so? A. No, sir.

Q. Do you frequently send requests to the General Film Company for certain pictures? A. Every week.

Q. Do they comply with your requests? A. Yes, sir.

Q. What projecting machine do you use in your theatre? A. I use a Standard.

Q. By whom is the Standard manufactured? A. By the American Motion Picture Machine Company.

Q. You had been doing business, you say, with the independent exchanges some time prior to taking service from the General Film Company? A. Yes, sir.

Q. Do they operate upon about the same plan with respect to releases and with respect to programs? A. Not with respect to programs. With respect to releases, they do. Only they don't release that many.

Q. How many do they release? A. When I left them, they were only releasing about twenty-two.

Q. How many is the General Film Company releasing? A. Forty-six.

Q. What exchange did you leave? A. The Universal.

Q. Had you been to the Mutual? A. Yes.

Q. How many releases did they have? A. About 22. When I first joined the Mutual, they only had fifteen a week.

Q. Do you find that the unlicensed exchanges are competing actively with the licensed exchanges for the business of exhibitors? A. Oh, yes; I can go out and get service in several different directions if I leave the General. Five or six distinct sources.

Q. Do you happen to have those in your mind so that you can tell us what they are? A. Yes, I can tell you what they are.

Q. Tell us just from what sources you can get a complete service. A. The Universal.

1 Q. Could the Universal give you a complete service? A. A complete service. The Mutual.

Q. Could the Mutual give you a complete service? A. Yes.

Q. What else? A. Warner's Features.

Q. Could they give you a complete service? A. Yes, sir.

Q. What does that comprise? A. Well, they release three or four two or three-reel subjects a week, and then they have on hand any number of reels as commercials. The two or three-reel subjects are always the feature, and the commercials are only an aftermath.

2 Q. From what other sources could you get your service? A. There are any number of feature film exchanges. The Exclusive Feature Film Company. They release four or five two or three-reel features, and they have a large number of commercials on hand. Then there is the Kinemacolor. Then there are smaller concerns by the score.

Cross examination by Mr. GROSVENOR:

Q. Are specials an important part of your program? A. Decidedly.

3 Q. And they are in all successful moving picture theatres today? A. Well, that all depends.

Q. Upon what? A. On the locality of the theatre.

Q. As far as your observation goes, the usual theatre exhibits specials? A. Most theatres.

Q. Was your license ever cancelled by the Patents Company? A. No, sir.

Q. Do you change your program daily? A. Daily.

Q. And how many new pictures do you show every day? A. I use six every day, new ones; brand new ones without repeats.

4 Q. Then you use in a week, forty-two? A. Forty-two new pictures.

Q. And you say Warner gets out how many every week? A. Warner's get out three or four two-reel features every week.

Q. And do they get out any other pictures besides this? A. They always have a large list of commercials.

Q. Commercials is the stock on hand? A. Stock on hand.

Q. But the forty-two reels that the General Film Com-

pany brings out are new reels every week? A. All brand new. 1

Q. So that you can buy from the General Film Company as many of these forty-two new ones as you like, and also you can go and get some of their old ones from the General Film Company? A. Well, I would not want to use any more than forty-two a week.

Q. If you don't want to take more than thirty of the forty-two new ones, you can buy twelve of the old ones from the General Film Company? A. I don't have to buy them from the General. I will go to Warner's.

Q. I say, you can get them from the General Film Company, if you want to. A. If I want to? I don't get your question clear. 2

Q. You say the General Film Company is your source of supply. A. It is.

Q. The General Film Company brings out forty-two new pictures a week? A. That is right.

Q. Do you take all of those forty-two? A. I take forty-two a week. Not forty-two new ones. See? I take forty-two a week, but they have—

Q. Of those forty-two that you take from the General Film Company every week, how many, on an average, are new films? A. Three. Three a day; that is, twenty-one a week. 3

Q. And you take twenty-one a week, films from the General Film Company, brought out in the week that you take them? A. In the week that I take them.

Q. And twenty-one films that may have been brought out the week preceding or several weeks preceding? A. Yes.

Q. Now, when you go to Warner's specials, they bring out three new ones a week; is that right? A. Yes. 4

Q. Instead of forty-two? A. Yes.

Q. And then when you refer to the old films, you mean the films that they have brought out in preceding weeks, just as the General Film Company has on hand films that it brought out in the preceding weeks? A. That is correct.

Q. How many films or new features does the Players bring out every week? A. They only bring out thirty a year.

1 Q. What were the other manufacturers you mentioned besides the Universal? A. The Universal now is releasing thirty-five a week, as is the Mutual. Thirty-five each, each week.

Q. How many is the General Film Company releasing, today? A. Forty-two.

Q. Are you sure of that? A. I am quite positive. That is, not including specials. Once in a while they get an extra special out, and that brings up the number.

2 Q. One of the defendants testified here that the licensed manufacturers are bringing out over sixty new reels a week? A. Including the specials, it probably amounts to that much.

Q. Have you included the specials in giving the number for the Universal? A. Oh, yes.

3 Q. Why did you include the specials in the Universal number and not in the number you gave to the licensed manufacturers? A. The Universal in its advertisements states that it releases thirty-five reels a week, as does the Mutual, which allows an exhibitor five a day without repeating. The General Film Company releases forty-two, but does not make mention of the specials.

Q. Let us take, then, the different manufacturers. Now, you have given the weekly output of the Universal, the Mutual, Warner's, the Famous Players. You also mentioned the Kinemacolor. How many do they bring out a week? A. I don't know the Kinemacolor output.

Q. What other manufacturers are there? A. There is any number of small manufacturers, or, rather, exchanges that import film direct from Europe.

4 Q. They could not supply you a satisfactory supply to keep your theatre running, any very long supply? A. They could for a while.

Redirect examination by Mr. KINGSLEY:

Q. How many subjects did you say the Famous Players release a year? A. Thirty a year.

Q. That means thirty long specials? A. Thirty regular Broadway plays.

Q. And each of them contains four to five reels? A. Four to five reels.

Q. When you speak of the forty-two releases of the licensed producers, you refer to forty-two reels? A. Forty-two single reels. 1

Q. And when you referred to the three or four releases of Warner's, you referred to three or four multiple reels? A. Multiple reels.

Q. How many reels are there in each of those specials? A. It all depends on what they produce. Most of their productions are three-reel productions.

Q. So when you say four reels, it is really twelve reels a week? A. Yes, sir.

Q. What is your service that you are getting at the present time? A. My service consists of six reels, a two-reel feature every day, thirteen days old. One reel thirty days old, and the rest without any age. I can use whatever I want between thirty and—there is no designation of the age. I can select whatever I want to use. 2

Q. You use how many a day? A. Six.

Q. And three are older than thirty days? A. Older than thirty days.

Q. So that your youngest reels are thirteen days? A. Yes. 3

Q. The next is thirty days? A. Yes.

Q. And the others are older than thirty days? A. Yes.

Q. I understood you to say you had three new reels a day in your program? A. These are comparatively new.

Q. They are not first-day runs? A. Anything under thirty days in the film business is comparatively new.

WILLIAM A. LANDAU, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, testified as follows: 4

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged, Mr. Landau? A. I am an exhibitor of motion pictures.

Q. Where are you located at present? A. 151 Wadsworth Avenue.

Q. How long have you been at 151 Wadsworth Avenue? A. About two months.

- 1 Q. Where is that? A. Corner of 181st Street.
 Q. In Manhattan? A. Manhattan. Fort Washington.
 Q. You have been there two months? A. In this particular place, yes.
 Q. Are you the owner of the place, or a part owner?
 A. I am president of the company.
 Q. Are you interested in, or do you own any other motion picture theatre? A. At the present time, two open-air places.
 Q. And where are your two open-air places located? A.
 2 One on the corner of Wadsworth Avenue and 179th Street, the other one on Jerome Avenue and Fordham Road.
 Q. How long have you had the two open-air places? A. Going on four years.
 Q. How long have you been in the motion picture exhibiting business? A. Seven years.
 Q. What other places have you had or managed during the seven years? A. Two other places, which I sold recently.
 Q. Where were they located? A. Audubon Avenue and 181st Street, the other one on Ogden Avenue.
 3 Q. From what rental exchange do you rent motion pictures? A. General Film Company.
 Q. Have you been getting your motion pictures from the General Film Company since you acquired the place that you are now running? A. Yes.
 Q. Did you get your pictures from the General Film Company for the open-air places that you were running?
 A. Not all of them.
 Q. Did you get part of them from the General Film Company? A. Yes, sir.
 Q. Are the open-air places closed now? A. At the present time.
 4 Q. Do you advertise a regular and definite program for your theatre at the present time? A. Well, this new house, if you will allow me, is a new house of its type, an absolute fire-proof building, seats 600 and about 200 standing. The house is of such type that I claim, and it has been proclaimed the finest of its kind in the country, today, and I do not use any advertisements whatsoever, except use photos only in the lobby. I don't use any posters, as every

motion picture house is using or has been using. It is a high-class house. 1

Q. What are these photos? Do they represent scenes?

A. Still pictures from the original film.

Q. So that now instead of a general advertising, you exhibit in your lobby still pictures taken from scenes in the motion pictures which you propose to display on some future date? A. Yes, sir.

Q. Do you have a fixed definite program, so that you are able to advertise safely without any possibility of deceiving your customers? A. Since I opened this house, I have a program printed, the same way like the regular theatre or opera houses, and in this program I advertise my entire weekly program in advance, every subject of it, and also I advertise my large features for a month and two months in advance. 2

Q. And advertise them in the local papers? A. Not in the local papers—in that particular program of mine, which is distributed to the trade as they come in.

Q. That is, you publish your program yourself? A. Yes, sir.

Q. Now, do you have any difficulty with your service from the General Film Company with respect to showing the program advertised on the date for which it is promised? A. Well, I wish to say that in the last six years that I have been doing business with the General Film Company, I never had any disappointment, with the exception of once or twice, from them. 3

Q. In a period extending over several years? A. Yes, sir.

Q. Do you get the releases that you ask for or that you arrange for? A. Always do.

Q. Do you find it possible to keep clear of your competitors at the present time? A. I do. 4

Q. Do you have any difficulty with respect to conflicting programs at present? A. The locality that I am situated in, I believe, is the hardest in New York City. I am surrounded by small houses, some of 220, some of 299, and one of 1,000 seats. Still, I manage to keep clear, because I don't pay any attention to what they exhibit. I simply carry out my own ideas and my own program. I don't consider any of them as competitors at all.

1 Q. Did you have any experience before the formation of the General Film Company as to whether service was reliable or unreliable? A. Very unreliable.

Q. Would exchanges promise you service and subsequently neglect to give it to you? A. I could not get what I was promised.

Q. Did you ever feel that you were paying for something that you did not get? A. Exactly.

Q. Did you ever have any dealings with Marcus Loew's Exchange before he sold it to the General Film Company?
2 A. That was my first exchange that I commenced to do business with when I opened up.

Q. Was Marcus Loew interested in any theatres at that time? A. He was.

Q. Did you have any occasion to notice whether the Loew Exchange favored Marcus Loew's theatres with respect to service? A. Well, as much as I could see at the time in that very vicinity where Marcus Loew had a theatre, you could not get certain films at a certain age, because his own theatres were favored from that very exchange that I was doing business with.

3 Q. His own theatres got the service? A. Prior to anybody else.

Q. Have you been familiar with the prices of service to exhibitors for some years? A. Yes, sir.

Q. What do you say as to whether prices have increased or diminished since the General Film Company has been in business? A. Well, in my estimation, the service that they have been in the habit of getting has very greatly advanced.

Q. Do you think it is practically the same in price? A. Almost. Almost the same; in fact, cheaper, if I may state, because you are getting more films, you are getting a better
4 service practically for the same amount that you used to get years ago.

Q. Does the General Film Company now release more pictures or fewer pictures than it formerly did? A. More than ever.

Q. Do you find that the service has improved or fallen off since the General Film Company went into business? A. It has considerably improved.

Q. Have you ever felt that you were obliged to take the

General Film Company's service, that you could not go to some other exchange if you wished? A. No, sir. 1

Q. Have you observed whether or not the producers of motion pictures have competed with one another in order to get the favor of exhibitors? I mean the licensed producers.

A. Only in that respect, that each manufacturer, I believe, is trying to outdo the other in his productions.

Q. Do they call your attention to their work which they consider peculiarly meritorious, by sending you circulars and letters, and asking you to demand of the exchange, those films? A. They send you advance notices giving you the synopses of the stories, and cuts from that particular film, giving you the description of various and different scenes, and so on. 2

Q. Do the unlicensed exchanges solicit your business from time to time? A. Right along.

Q. Do they promise you good service? A. Well, it is just like every other salesman, I suppose; he is trying to offer you the best goods, and naturally makes you all kinds of promises, but it is up to the buyer to look into the merits.

Q. Do they quote you attractive prices? A. Far below the price that I have been paying to the General Film Company. 3

Q. Have you dealt at all with unlicensed exchanges in the past few years? A. Yes, sir. With the Mutual.

Q. What was your experience as to whether the unlicensed exchanges with which you dealt were reliable or unreliable? A. Very unreliable. ✓

Q. By that you mean what? A. I could not get the films that I had booked for and advertised. The day of release, they made some excuse to me that some of the films did not come in from out of town, or destroyed, or any old excuse.

Q. When you use the expression "day of release," do you mean the day on which they had agreed to give you the film? A. The day that they had agreed to, to give it to me. 4

Q. The day you wanted it? A. The day I wanted it.

Q. And you found it unsafe to advertise under those conditions? A. Yes.

Q. And the condition became generally unsatisfactory? A. Yes, sir.

Q. What projecting machine do you use in your place of business? A. Powers Nos. 5 and 6, and the Standard.

1 Cross examination by Mr. GROSVENOR:

Q. Do special features constitute an important part of the program in your theatre, Mr. Landau? A. Very much.

Q. You have a special feature every day? A. No, sir. Two days in a week.

Q. And then you show each special for three days? A. No, sir; for two days.

Q. What days are they? A. Tuesdays and Wednesdays with me.

2 Q. They are generally multiple reels, are they? A. Five and six-reel productions, or four, as the case may be. At the present time it is the Famous Players that I am using, and the All Star Features, and so on.

Whereupon, at 12:15 P. M., the hearing is adjourned until 2:30 o'clock P. M., at the same place.

NEW YORK CITY, November 20, 1913.

3 The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., on November 20, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon, SAMUEL LONG, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

4 Direct examination by Mr. CALDWELL:

Q. Mr. Long, where do you live? A. New York City.

Q. And in what business are you engaged? A. In the production of motion pictures.

Q. What is the name of your company, if any? A. Kalem Company.

Q. You are one of the defendants in this case? A. I am.

Q. When was the Kalem Company organized? A. In 1907.

Q. And what is your connection with that company? A. 1
I am President of the company.

Q. And have you been the President of the company
ever since its organization? A. I was the first President.
I was President from about 1907.

Q. Well, it was organized in 1907, you say? A. I was
Vice-President when it was organized.

Q. And how soon after its organization did you become
the President? A. In 1907.

Q. You say it was organized in 1907? A. I mean, in
1908.

Q. You became President, then, in 1908? A. Yes, sir. 2

Q. And who was the first President? A. George Kleine.

Q. Did you have any connection with the motion picture
business prior to the time of the organization of the Kalem
Company? A. I was with the American Mutoscope & Bio-
graph Company.

Q. Over what period? A. From the beginning of 1897
to near the end of 1906.

Q. That is the same company that is known now under
the name of the Biograph Company? A. It is the same
company.

Q. And what were your duties in connection with that 3
company? A. I was in charge of the laboratory work in
New York, and Hoboken, New Jersey.

Q. Was there any other one connected with the Bio-
graph Company who subsequently joined you in the organ-
ization of the Kalem Company? A. Mr. Frank Marion.

Q. In what department of the business was Mr. Marion
engaged? A. He was in charge of the scenarios and studio
productions.

Q. Do you know how long Mr. Marion was connected
with the Biograph Company? A. During about the same 4
period I was. He left the Biograph Company a few months
after I severed my connection with it.

Q. Then, during the time you were connected with the
Biograph Company, you knew of the litigation that was
pending between the Biograph Company and the Edison
Company, did you? A. I knew of it, yes.

Q. What connection have you with the General Film
Company, if any? A. I am a Director of the General Film
Company.

1 Q. How long have you been a Director? A. Since its organization.

Q. Had you ever, at any time, occupied any other office than that of a Director, in the General Film Company? A. I was Treasurer of the General Film Company.

Q. During what period? A. From December, 1911, to December, 1912.

2 Q. When you and Mr. Marion left the Biograph Company and organized the Kalem Company for the purpose of going into the business of producing motion pictures, do you recall whether the time of the commencement of your business was before or after the decision of the United States Circuit Court of Appeals in the case of the Edison Company against the Biograph Company on the camera patent?

Mr. GROSVENOR: The camera reissue?

Mr. CALDWELL: The camera reissue, yes.

The Witness: We began our operations before that.

3 By Mr. CALDWELL:

Q. Before starting in business, did you confer with counsel on the question of your right to engage in the production of motion pictures? A. We conferred with Messrs. Kerr, Page & Cooper.

Q. And what did they tell you on that subject? A. They advised us to obtain a license under the Edison patents.

4 Mr. GROSVENOR: I object to this testimony as to what advice counsel gave the witness, it being immaterial, and also irrelevant, and also misleading, unless first, the date is shown as to just when the Kalem Company commenced doing business.

Mr. CALDWELL: He has just stated that it was prior to the date of the decision of the United States Circuit Court of Appeals in the case to which I have referred, and that is a matter of record in this case.

By Mr. CALDWELL:

1

Q. Do you recall the month of the year 1907 that you obtained this advice from your counsel? A. We produced our first picture in February and it was prior to that.

Q. Then it was prior to February, 1907? A. It was either the first of February, or prior to the production of our first picture in February.

Q. And was the advice of your counsel to which you have referred, verbal or in writing? A. It was verbal.

Q. And they advised you to apply to the Edison Company for a license under the Edison camera patent? A. Yes, sir.

2

Q. Did you apply to the Edison Company for a license under the Edison camera patent? A. Yes, we did.

Q. Was that application verbal or in writing? A. That application was verbal, to Mr. Alexander Moore, who then had charge of the Kinetograph department of the Edison Company.

Q. State again, Mr. Long, about when it was you made your first application to the Edison Company for a license, as near as you can remember? A. It was a very short time before we produced our first picture, in February of 1907.

3

Q. Well, what became of that application? Did you hear anything from it? A. Nothing ever came of that application.

Q. Then subsequently did you or did you not renew your application for a license under the Edison camera patent? A. We made a second application to Mr. Moore.

Q. Was that second application prior or subsequent to the decision of the United States Circuit Court of Appeals in the case to which I have just referred? A. It was subsequent.

Q. Did you obtain any advice from your counsel, Kerr, Page & Cooper, subsequent to the rendering of that decision? A. I do not recall it.

4

Q. Well, what became of your second application for a license to the Edison Company? A. Mr. Moore seemed friendly disposed, and was inclined to keep us waiting, and nothing came of it immediately.

Mr. GROSVENOR: And when was this second application?

- 1 The Witness: A short time after the decision of the Biograph-Edison case.

By Mr. CALDWELL:

Q. Do you recall hearing, some time during the Fall of 1907, of Judge Kohlsaat's decision in the United States Circuit Court at Chicago, in a suit brought by the Edison Company against Selig?

- 2 Mr. GROSVENOR: I object to the question as leading, and, furthermore, as assuming something which has not been proven, said opinion having been introduced in evidence, and being dated in the year 1910.

Mr. CALDWELL: A certified copy of the opinion in evidence distinctly states that it is filed as of November, 1907—

Mr. GROSVENOR: Filed in 1910.

Mr. CALDWELL: Yes, as of November, 1907.

By Mr. CALDWELL:

- 3 Q. Now, you may state whether you heard of the decision in that case? A. The decision was printed in the dramatic papers.

Q. You mean references to the decision were printed in the dramatic papers? A. Yes, sir.

Q. Did you read it in the dramatic papers at that time? A. I read it in the Clipper, or the Dramatic Mirror.

Q. One or the other, you think? A. Yes, sir.

- 4 Q. Well, what did they say about that decision as to what it involved, these papers to which you referred? A. Well, it represented that the Edison patents were the controlling patents, and we were then the more impressed with the importance of having a license under the Edison patents.

Mr. GROSVENOR: Objected to, as hearsay; I move to strike it out.

By Mr. CALDWELL:

Q. When did you next take up with the Edison Company the question of obtaining a license? A. In the Fall of 1907.

Q. With whom were your negotiations conducted, that is, with what representative of the Edison Company? A. With Mr. Moore, and afterwards with Mr. Dyer. 1

Q. And what was the result of those negotiations? A. The final result was the granting of a license to us.

Q. I show you Petitioner's Exhibit No. 92, attached to the answer of the defendant Thomas A. Edison Company in this case, being license agreement dated January 31st, 1908, between the Edison Manufacturing Company, and the Kalem Company, and ask you if that is the license agreement which you executed with the Edison Manufacturing Company? A. I believe it is. 2

Q. During the Fall of 1907 did you know that litigation was pending between the Edison Company and the Biograph Company?

Mr. GROSVENOR: I object to that as leading, and, also, a statement of something that isn't yet proven.

The Witness: Yes, there was.

By Mr. CALDWELL: 3

Q. Did you know whether or not litigation was pending between the Edison Manufacturing Company, and any other producers of motion pictures at that time? A. I don't remember.

Q. You do not remember the names of the defendants, you mean?

Mr. GROSVENOR: I object to that as palpably leading.

The Witness: Will you read the last two or three questions and answers. 4

The questions and answers were read as follows:

"Q. During the Fall of 1907 did you know that litigation was pending between the Edison Company and the Biograph Company? A. Yes, there was.

"Q. Did you know whether or not litigation was pending between the Edison Manufacturing Company

1 and any other producers of motion pictures at that time? A. I don't remember.

"Q. You do not remember the names of the defendants, you mean?"

The Witness: Now, as I understood the original question, it was, was there litigation in 1908?

Mr. CALDWELL: In the Fall of 1907. Then you misunderstood my question, didn't you?

2 The Witness: I understood it to be 1908.

By Mr. CALDWELL:

Q. Did you know whether or not the Edison Manufacturing Company was in litigation with any other producers of motion pictures in the Fall of 1907? A. Yes, they were in litigation with Selig, and Edison.

Q. Can you recall any others? A. Pathe Freres. That is all I recall at the present.

Q. You knew that at the time, did you? A. Yes, sir.
3 Notices of the suits were published in the dramatic papers.

Q. What were the reasons that influenced you to apply to the Edison Company in the Fall of 1907, for a license?

A. My experience with motion pictures led me to believe that that system was the only feasible system to use, and I therefore applied to use it, or for a license to use it, without infringing.

Q. Were you at any time during the year, and when I say "you," I mean the Kalem Company, at any time during the year 1908, and subsequent to January 31, 1908, sued by the Biograph Company on any of the patents owned by it? A. We were sued by the Biograph Company under the Latham loop patent.
4

Q. And did you defend that suit? A. No, we turned that over to the Edison Company to defend. We were a licensee then of the Edison Company.

Q. And do you know what became of that suit? A. I think it was discontinued.

Q. Do you know when it was discontinued—I don't mean the date? A. I think it was discontinued in 1909.

Q. Then it was discontinued after the settlement of the so-called warfare between the Biograph Company and the Edison Company, is that right? A. It was. 1

Q. What effect, if any, did this litigation between the Biograph Company and the Edison Company have on your business? A. At what period?

Q. During the year 1908? A. It made us feel nervous, and it affected exhibitors who we thought might obtain licenses to exhibit pictures under the patents held by the Biograph Company, and to a large extent exclude the pictures which were licensed under the other patents, and in that way we feared a diminution of our market. 2

Q. Were you afraid that if that litigation succeeded your business might be closed up? A. Yes, if it had succeeded we would have not had an outlet for our film.

Q. Now, Mr. Long, when did the Kalem Company first build and equip a factory for the printing of motion pictures from the negatives? A. An office was opened in January, 1907, and some laboratory equipment and studio equipment was provided in February of 1907.

Q. And what was the extent of the business done by the Kalem Company in the year 1907? A. We produced a motion picture about every two or three weeks. No regular dates of issue were then in vogue. 3

Q. And was the rate of production gradually increased after you obtained an Edison license? A. It was. After obtaining an Edison license we increased the producing facilities, and also the laboratory equipment.

Q. Now, after you became a licensee of the Motion Picture Patents Company, what effect, if any, did that have on your business so far as output went? A. We felt that we could invest more money in the business, enlarging the output; which we proceeded to do after the granting of a license by the Patents Company. 4

Q. What was your production, say, in December, 1909? A. Possibly one reel a week, one reel of subject matter per week. About the end of 1909 and the beginning of 1910 our output was increased from one motion picture production per week to two productions per week.

Q. Now, when was the next increase that you made in your production of motion pictures? A. In 1911. We in-

- 1 creased the production in 1911 of pictures from two reels per week to three per week.

Mr. GROSVENOR: I object to all this as immaterial.

The Witness: In 1912, the production was increased from three productions or reels per week to four per week. And in 1913 it was increased from four reels of production per week to five reels per week.

- 2 By Mr. CALDWELL:

Q. What was the capacity of your plant at the beginning of your business, in positive running feet? A. The first laboratory had a capacity of about three thousand to four thousand feet of positive film per day.

Q. And in 1908, what was it? A. In 1908 it was increased to possibly eight thousand or ten thousand feet per day.

- 3 Q. And you may also state for the years 1909, 1910, 1911, 1912, and 1913? A. In 1909 the office and laboratory were moved to larger quarters, and the productions increased to approximately thirteen or fourteen thousand feet per day. The studio facilities were also increased at that time. Further increases were made in 1911. The production was then increased to about twenty thousand feet per day. In 1912 the laboratory production was increased to approximately twenty-five thousand feet per day, and at the present time the production is about sixty thousand feet per day.

- 4 Q. You may state what number of actors and actresses you employed at first, early in 1907, and then in successive years? A. In 1907, when we began business, we employed a director who engaged actors and actresses by the day for the production of a picture. No stock company was at that time maintained steadily. During nearly all of 1907 we produced pictures in that manner. In 1908 we engaged two directors and five or six actors and actresses steadily in a stock company, and additional actors and actresses were engaged by the day, or for the picture in which they posed. At intervals of about six to nine months we in-

creased the producing force by engaging additional directors, and engaging additional actors and actresses, constituting a stock company, each stock company being under the management of a director. In addition to the actors and actresses engaged in the stock company on weekly salaries, extra people were engaged to make a full cast for each production they were producing. In addition to the actors and actresses employed there were scenic artists, stage carpenters, property men and other assistants. During the different periods, as I have stated above, the increase in the number of actors has grown from one stock company of four or five, to eight stock companies employing approximately sixty actors and actresses, in addition to approximately twelve scenic artists, fifteen to twenty stage carpenters and about twelve property men.

Q. In the year 1907, did you export any motion pictures? A. In 1907 we did not export any.

Q. Do you at the present time? A. We do. We export our productions.

Q. When did your exportation begin, what year? A. It began in 1909.

Q. Can you state what percentage your export business constitutes of your entire business?

Mr. GROSVENOR: I object to all this testimony as immaterial.

The Witness: At the present time it constitutes approximately twenty-five to thirty per cent.

By Mr. CALDWELL:

Q. You are familiar, are you not, with the requirement in the Edison license agreement as to the return of film? A. I am.

Q. Did you oppose that provision in the license agreement, or were you in favor of it? A. I was in favor of the return of film.

Q. In January, 1908, when that agreement was made, you had been in the motion picture business for some seven or eight years? A. Yes.

Q. And what were the reasons that influenced you to

1 favor that provision? A. My experience had shown me that films become oil-stained, scratched, the sprocket holes worn, and because of breaks, portions of scenes were cut out, so that a film becomes in such a condition that it gives very poor exhibitions after it is from four to six months old. Six months or less was considered the life of a film, and for that reason I believed it desirable that the film should be returned.

2 Q. Prior to the year 1908 did you ever see any of the boxes containing the motion picture film that had been manufactured by the Edison Company, or produced by the Edison Manufacturing Company? A. I saw them in exchanges.

Q. Do you know whether or not those boxes contained printed labels, or labels stating that the film was patented? A. There was a label on the box, bearing the Edison trade mark, and a notice of the patent.

Q. What, if any, connection did you have with the formation of the Motion Picture Patents Company? A. I had nothing to do with the formation of the company.

3 Q. When was the first knowledge that you had that such a company had been formed or would be formed? A. It was on the day that we were called to examine the license, and sign it, or refuse.

Q. Of course, you knew at that time that the Edison and Biograph interests had come to an agreement? A. I understood so.

Q. And from whom did you get that understanding or information? A. From Mr. Dyer.

Q. Had you discussed with Mr. Dyer in any way the question as to whether you would receive a license both under the Edison patents, and the Biograph and Armat patents? A. Yes, it had been discussed with Mr. Dyer.

4 Q. Then you knew that you were to receive a license under both the Edison and the Biograph and Armat patents, but you didn't know in what particular way the license was to be issued?

Mr. GROSVENOR: I object to that as assuming something that the witness has not testified to, and, furthermore, as leading.

The Witness: No, I did not. I did not know the form

in which we would have the benefit of using these patents, but I had been given to understand that we could have a license under those patents.

Q. What connection, if any, did you have with the organization of the General Film Company? A. I was one of the incorporators, and one of the first Directors.

Q. When was the first time that you heard any discussion among any of the licensed producers as to the organization by the licensed producers of a rental agency to be conducted by them? A. Some months prior to its organization, probably in January prior to its organization.

Q. Were you at first in favor of the project? A. I was indifferent. I had had no experience in the exchange business, and I was not able to form any opinion regarding it.

Q. In stating that you were "indifferent" to the project, do you mean by that to say that you were unwilling to go into it, or that you wanted to go into it? A. I was timid about such a move, not having had any experience in the exchange business. We were selling to the exchanges.

Q. Were there any reasons which finally influenced you to give your consent to go into it? A. The manner in which the exchanges were conducted led me to believe that there should be a change for the benefit of the business. Many exchanges were conducted in a way in which they were able to pay promptly, and others were not; and others treated their customers unfairly, which made me believe that there should be some change in the business for the benefit of the business as a whole, and in order that we would have a market for our films, and could distribute them freely among the exhibitors. But, even with that, I was timid in regard to organizing such a company.

Q. You have stated that the exchanges conducted business unfairly towards the exhibitors. Did you ever have any complaints from any of the exhibitors about the way in which the exchanges conducted their business? A. Those complaints came to our office from the exhibitors. The exhibitors felt that as they were using pictures produced by us that we ought to see that they could have the films for exhibition when they could exhibit them.

Q. Were those complaints many and frequent, or were they few and far between? A. They were frequent.

1 Q. At the time of the organization of the General Film Company was it your idea that the General Film Company would acquire all of the then existing licensed exchanges? A. No, it was not my personal idea. This plan had been proposed, and, as I said, I was timid about it.

Q. And by "this plan" you mean the plan to acquire them all?

Mr. GROSVENOR: I object to that as leading.

2 The Witness: No, the plan of the organization of a company to do a rental business.

By Mr. CALDWELL:

Q. As far as you know, was it the plan of any of the other persons who organized that company to acquire them all? A. I don't think so.

Q. Well, what was the plan, so far as you understood it? A. It was to acquire such exchange or exchanges as might be offered for sale, and operate them in a manner that would be an object lesson to the exhibitors, and also to the other exchanges, and, if other exchanges were offered, to have representation in the principal distributing film centers of the United States.

Q. During the year 1908 was the Kalem Company in competition with the other licensed producers? A. It was.

Q. In what respects were they competing? A. They were competing in the actors and actresses which they engaged, the merit of their scenarios, the excellence of their photographic work, the excellence of the scenic artists which constituted a part of the picture, the costuming; in advertising their products, in the disposition of them to exchanges through solicitors.

Q. During the year 1908 did the Kalem Company exert itself much among the exchanges to bring its pictures before them? A. The Kalem Company had a solicitor frequently visit the exchanges in order to increase the use of their film productions. The advertising department also did extensive advertising.

Q. Did any of the other licensed producers do the same thing, or do you know? A. Yes, I do. Our competitors had solicitors who worked very much in the same manner.

Q. Now, after the Kalem Company became a Patents Company licensee, did it compete with the other licensees of the Motion Picture Patents Company? A. It did. 1

Q. In what way? A. And the competition became very acute in the matter of engaging talent for the pictures. And in instances, competing companies would take actors and actresses away from us, and we would in turn take them from other competing companies. For instance, the Biograph Company has recently taken an actor from the Kalem Company, and we are now negotiating to get that actor back. We have taken actors from the Vitagraph Company, and the Vitagraph Company have taken them from the Kalem Company. 2 We have taken a director from the Pathe Company. The Essanay Company has taken a director from the Kalem Company. These changes have been attended with increases in salaries. Each company is striving to obtain the best scenarios, or plays, for their productions. We recently were bidding for a play called "Leah Kleschna," and we were outbid by the Famous Players. We recently were bidding for the right to take a picture of the National baseball series, but were outbid by the Commercial Motion Picture Company. This company has also been encouraged by its success, and secured rights to photograph the Army and Navy football game the last Saturday in this month. The competition goes further than that. In the matter of the scenic work, the scenic painters we engage, and other theatrical properties are a matter which enters into the merit of making pictures, and each company is seeking the best of those. A few months ago a company was organized by an attorney who was interested in motion pictures. This company engaged one of our best directors, a leading woman, a leading man, the best scenic artist we had, and a property man, and this constituted the nucleus of the company, and they organized a complete, comprehensive company to produce pictures with the same talent that we were engaging. Camera operators are also in demand, and the competing companies engage them from one company to organize another company for their additional outputs. 3 4

Q. The Famous Players Film Company and the Commercial Motion Picture Company, they are unlicensed producers, are they not? A. They are not licensed.

1 Q. Then is your competition keen and active with the
unlicensed producers? A. It is.

Q. Is this Commercial Motion Picture Company allied
with the Mutual or the Universal Company, or do you know?
A. I don't know with whom they are allied.

Q. Has there been any increase in the amount of the
salaries paid to actors and actresses by the Kalem Company
since 1908? A. There has.

2 Q. Will you state what you know about the increase of
salaries which the Kalem Company has paid to its actors and
actresses? A. We formerly paid twenty to twenty-five
dollars per week for actors and for actresses in stock com-
panies, and the engaging of actors and actresses by the
day at three to four dollars per day. As competition in-
creased, and there was a demand for experienced actors,
who were absorbed by the other companies, we were com-
pelled to pay from thirty to forty dollars per week for
leading people in our picture productions, and correspond-
ingly more for actors engaged by the day. From year to
year, this has increased. At the present time we are pay-
ing for people for leading business in the pictures, from
3 fifty to two hundred dollars per week, and five to ten dol-
lars per day for extra help.

Q. How about salaries paid to stage directors? Has
there been any advance in those salaries? A. There has.
We paid the first director \$35 dollars per week, which was
considered a very high salary at the time. This same di-
rector, because of the demand for his services, was going
to leave us and go with another firm at a higher salary,
which resulted in our paying that particular director or
producer \$200 per week. Other directors, who at first re-
ceived \$35 to \$50 per week, now receive from \$75 to \$175
4 a week.

Q. Reference has been made several times in the testi-
mony here to a picture entitled, "From the Manger to the
Cross." Who was it that produced that picture?

MR. GROSVENOR: I object to that as immaterial.

The Witness: The Kalem Company produced the picture.

By Mr. CALDWELL :

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Q. Was that a picture involving great negative cost?

A. It did.

Q. And is it considered in the motion picture art as one of exceptional and rare merit? A. It is.

Q. Will you state how that picture was taken? A. The picture is a portrayal of the human side of the life of Jesus of Nazareth, and in order to produce it with the proper environment, a company was sent to Egypt and Palestine, in order to enact the various scenes at the places where they occurred. The company was located in Egypt for a time, in order to produce scenes which occurred in that country during the period of the life of Jesus referred to as the Flight into Egypt. After producing those scenes, the company went to Palestine. Scenes were produced in Bethlehem, Nazareth, the Sea of Galilee and Jerusalem. Structures were made in Jerusalem which were a reproduction of the buildings not now existing. A portion of the Temple was built, in order to enact those scenes in which Jesus was in the Temple. Costumes were made to be correct to that period of time. The time consumed in making this picture was approximately three months. The cost of the picture, which included the cost of making the costumes, building the scenery, hire of actors and actresses, director, extra people which were engaged in Palestine and Egypt, and maintenance of a stock company, aggregated approximately \$25,000.

2

3

Q. Do you mean by that, the cost for producing the negative alone? A. The cost of producing the action and photographing the negative.

Q. You do not include in that the cost of printing positives from that negative? A. No positive cost is included in that. That was all prior to making any positive print.

4

Q. Will you state how that picture was handled by the Kalem Company? Was it made the subject of one of its regular releases? A. It was not a regular release.

Q. Why not? A. The merit of the subject and the nature of the subject was such that we did not think it should be issued through the regular channels and go into theatres which might use it preceding or succeeding the exhibition of melodrama or comedy pictures. Its cost also, forbade us going through those channels.

1 Q. In what way, then, was it handled? A. The General Film Company was made our agent, to dispose of it by State rights.

Q. Explain what you mean by State rights? A. The right to exhibit the picture was sold to concessionaires, who would have the right to exhibit it in a certain State or States.

Q. Do you mean the exclusive right to exhibit it? A. They would have the exclusive right in the State in which they paid for that right.

2 Mr. GROSVENOR: Which was sold by the General Film Company?

The Witness: The right of exhibition was sold for a period of a year.

Mr. GROSVENOR: To the General Film Company?

The Witness: The General Film Company, as agent for the Kalem Company, sold the right of exhibition to the concessionaires.

By Mr. CALDWELL:

Q. Was there any basis of division of profits resulting from the sale of the State rights between the General Film Company and the Kalem Company? A. There was.

Q. Was that picture play or drama ever copyrighted by the Kalem Company? A. The play was copyrighted by the Kalem Company.

Mr. GROSVENOR: Do you mean the scenario?

The Witness: The scenario, yes.

4 By Mr. CALDWELL:

Q. I hand you here a printed document bearing on the title page the following words: "From the Manger to the Cross, or Jesus of Nazareth, a drama in five acts, by Gene Gauntier, Copyrighted 1912 by Kalem Company," and I ask you if that is the copyrighted drama of this motion picture

play? A. Yes. That is the scenario which we copyrighted. 1

MR. CALDWELL: I would like to have the Examiner mark that for identification.

The exhibit is marked "Defendant's Exhibit for Identification, No. 114."

By MR. CALDWELL:

Q. Can you mention the titles of any other plays of rare and exceptional artistic merit which have been produced by the Kalem Company? A. We have produced Shenandoah, a play by Bronson Howard; we have produced "The Octo- 2
roon," by Dion Boucicault; "Shaughraun," by the same author. We have produced "The Land Swindlers," with Detective W. J. Burns, by Emmett Campbell Hall; "Colleen Bawn," by Dion Boucicault. We are now producing "The Celebrated Case." We have recently produced "Our New Minister." Do you want a further list?

Q. That is sufficient. Did you as an officer of the Kalem Company or as an officer of the General Film Company, attempt directly or indirectly to influence the Patents Com- 3
pany to cancel an exchange license in order that the General Film Company might acquire that exchange? A. No.

Q. Do you know a man by the name of James J. Lodge? A. I have met him once.

Q. When did you meet him for the first time? A. At the time we read and signed the license agreement with the Patents Company.

Q. Are you referring now to the meeting of December 18th, 1908? A. That is the day.

Q. At that meeting was there any discussion which you heard to the effect that the licensed producers should organize a film rental company of their own? A. I don't recall such 4
conversation.

Q. Did you hear any other discussion at that meeting than that relating to the reading and execution of your license agreement? A. I don't recall any. No. My mind was entirely on that agreement, which was entirely new, and which was there for consideration.

Q. How long did that meeting last? A. It lasted all that afternoon.

1 Q. And was any other subject discussed than that agreement? A. I don't recall any.

Q. Did you hear anything said at that meeting that the licensed producers would accumulate a gigantic fund for the purpose of conducting litigation under the patents, and monopolizing the business, or anything to that effect? A. No, I don't recall any. My understanding was that the patentees would defend their patents.

2 Q. It is alleged in Subdivision 3 of the petition, that the defendants in this case determined to destroy competition between them, to monopolize the commerce relating to the motion picture art, to exclude all others thereafter to carry on said commerce, according to the terms of the unlawful combination which they were to create. Did you either individually as an officer of the Kalem Company or subsequently as an officer of the General Film Company, or to your knowledge any of the defendant corporations or any officer of them, ever determine or intend or purpose to do any such thing? A. No.

3 Q. It is alleged in the same subdivision of the petition that the Motion Picture Patents Company was to acquire all patents owned by the defendants and all other patents relating to the motion picture art. Did you have anything to do with the organization of the Motion Picture Patents Company? A. I did not.

Q. And did you, and by "you" I mean you or the Kalem Company, ever assign any patents to the Motion Picture Patents Company? A. I did not.

4 Q. It is further alleged in the same subdivision of the petition, page 7, that the intent of the defendants in forming the Motion Picture Patents Company and entering into the license agreements, was to control, restrain and monopolize all branches of commerce among the States of the United States, and with foreign nations, relating to the motion picture art, and exclude all others therefrom. Did you either individually or as an officer of any of the corporations with which you were connected, or to your knowledge, any of the other defendants, have any such intention or purpose in entering into the license agreements or in any of the other agreements referred to in the petition? A. We did not.

Q. The petition in Paragraph 5 alleges that, with the same unlawful purpose, each of the ten manufacturers theretofore referred to, entered into license agreements with the Patents

Company on December 18th, 1908. Did you either individually or as an officer of the Kalem Company, or to your knowledge any of the other defendants, have any such purpose or purposes as those alleged in the petition, in entering into this license agreement? A. I did not. 1

Q. Did you have anything to do with the licensing of the manufacturers of projecting machines? A. I did not.

Q. Did you ever obtain a license to manufacture projecting machines? A. I did not.

Q. And by the word "I" you mean the Kalem Company did not? A. The Kalem Company did not.

Q. In Subdivision 9, page 27, the petition alleges that the defendants set out to monopolize the business of all of the rental exchanges or agencies in the United States; that their purpose was to drive out of business all persons so engaged, and to absorb to themselves the profits theretofore made therein, and that this unlawful end was accomplished by means of the General Film Company. Are these allegations of the petition true? A. They are not. 2

Q. In Subdivision 11, page 34, the petition alleges that with the same unlawful purpose, each of the ten Patents Company licensees executed an agreement with the General Film Company to supply the latter with film. Were these agreements executed for the purpose alleged in the petition? A. No. 3

Cross examination by Mr. GROSVENOR:

Q. Mr. Long, do you recall this meeting on December 18th, 1908, at which those several agreements, being the license agreement, were executed between the Patents Company and the various licensed manufacturers? A. I recall reading the license agreement and signing it.

Q. That agreement was read in the presence of all you manufacturers, to you all, on that afternoon, before you signed it? A. Yes. 4

Q. And all the manufacturers were present there together? A. I think they were. I am not positive that they were all there at that time.

Q. All the agreements were signed at the same meeting? A. That is my memory of it, yes. I signed it at that time.

Q. How were you called up? Did you sign in alpha-

1 betical order? A. I don't think we did. Each one had copies, and different ones signed at a table. I don't recall any alphabetical order of signing.

Q. Who presided at the meeting? A. Mr. Dyer.

Q. The Edison agreements, signed earlier in the same year, that is, on January 31st, 1908, were those all signed at a meeting at which the seven manufacturers were present, and simultaneously? A. I don't recall.

Q. You don't know about that? A. I do not recall that.

2 Q. As a matter of fact, they were all dated the same day, weren't they; that is, the arrangement started in to be in effect on February 1st? A. Yes, they were all dated at the same time. So I understand.

Q. On direct examination you testified that you began to manufacture, and by "you," I mean the Kalem Company, pictures in the early part of 1907. A. Yes.

3 Q. And that you began to manufacture before you went and consulted with an attorney as to whether or not you should take out a license from the Edison Company? A. I think my testimony was that we consulted the attorney before we began to produce pictures.

Q. And he told you you should take out a license? A. That was his advice.

Q. But in any event, you did not get a license, or take out a license, up to starting to manufacture? A. We made application for a license, and declaring our object in asking for the license as our desire to go ahead at once. Not having a definite denial that we would not receive a license, we proceeded to produce pictures.

4 Q. And you went ahead, regardless of whether or not you were going to get a license? A. We had a hope that we would. We had not been discouraged that we would not be granted a license.

Q. Having nothing better than a hope, you went ahead and manufactured pictures? A. We did.

Q. And you continued so to do throughout the year 1907? A. Yes.

Q. Did you at that time consider that you were violating or infringing the Edison camera patent? A. We knew it.

Q. I beg your pardon? A. We knew it, and admitted it to Mr. Moore of the Edison Company.

Q. Did you think at that time you were violating the Latham patent, or didn't you know anything about the Latham patent at that time? A. At that time I don't think I was familiar with the Latham patent; not until later. 1

Q. Did you use projecting machines in 1907? A. We used a projecting machine only for viewing films in our own office.

Q. And did that have a loop on it for the film? A. That did.

Q. And did your camera also have a loop? A. It did.

Q. You say at that time you had not heard of the Latham patent? A. I don't know that I had, in 1907. That is, at the time we began producing pictures. 2

Q. You never heard of the Latham patent, did you, until after the Biograph Company had refused to join in with the Edison licensees, and then bought the Latham patent and brought suit against you and others?

Mr. KINGSLEY: I object to the question as not being based upon the preceding answers of the witness.

The Witness: I don't know the time when I first knew of it, but I did know of it when suit was brought. That is beyond question. 3

By Mr. GROSVENOR:

Q. Had you ever heard of the Latham patent before the Edison Licensees Association was formed? A. I don't think I had.

Q. Had you ever heard of the Pross patent before the Edison Licensees Association was formed? A. I had.

Q. When did you hear of that patent? A. I was with the Biograph Company when Mr. Pross was working on that invention. I don't know the date of taking the patent, but I knew that such a patent was taken by Mr. Pross. I knew it before 1907. 4

Q. That was a patent on a form of shutter to be used? A. Yes.

Q. What kind of a shutter did you use in the year 1907? A. An Armat form of shutter.

Q. You did not use the Pross shutter? A. Not the Pross

1 shutter. We used the shutter that was on machines sold by the Powers Picture Machine Company.

Q. No suit was brought against you in 1907 under any patent, was there? A. No, there was no suit brought.

Q. The first suit that you were defendant in, was the suit brought after you had joined the Edison Licensees? A. It was a suit brought by the Biograph Company on the Latham loop.

Q. And that was brought by the Biograph Company under the Latham patent after the Edison Licensees Association had been formed? A. Yes, it was after that time.

2 Q. You were a Director of the General Film Company from its inception? A. I was.

Q. And on the Board of Directors of the General Film Company, you were the representative of the Kalem Company? A. Yes.

Q. And each of the other Directors was a representative of one of the other licensed manufacturers? A. Yes.

Q. And no one was a Director of the General Film Company who was not a licensed manufacturer or an important officer of a licensed manufacturer? A. I believe that is correct.

3 Q. And each licensed manufacturer had only one representative on the Board of Directors of the General Film Company? A. That was the case at the organization of the company. At subsequent times, there has possibly been two representing one producer of pictures, and at times one producer of pictures has not been represented at all on the Board.

Q. But the general rule has been for each licensed manufacturer to have one representative and only one on the Board of Directors of the General Film Company? A. That has been the apparent formation of the Board.

4 Q. After the organization of the Patents Company, the licensed manufacturers had meetings from time to time at which various matters were considered, among others, the subject of recommending to the Patents Company the cancellation of a license of some rental exchange? A. They did.

Q. And such meetings of the licensed manufacturers recommended from time to time to the Patents Company that a license of a rental exchange or that several licenses of several rental exchanges, be cancelled? A. They did.

Q. And you attended such meetings considering such sub-

jects, namely, the cancellations of licenses of rental exchanges, while you were a Director of the General Film Company? A. I did. 1

Q. You attended such meetings of the licensed manufacturers as the representative of the Kalem Company? A. I did.

Q. And in the same period, you attended meetings of the Directors of the General Film Company as representative of the Kalem Company, at which meetings of the Directors of the General Film Company was considered the subject of the acquisition or purchase of the various rental exchanges? A. Yes. 2

Q. Now, at these meetings of licensed manufacturers called to consider the question of cancellation of rental exchanges, you had a vote on the question of cancellation, did you not? A. I did.

Q. And at the meetings of the Directors of the General Film Company at which was considered the subject of the purchase of various rental exchanges, you had a vote as a Director on the question of buying the rental exchange, didn't you? A. I don't think I ever voted on the question. I don't know that it came before the Board, the consideration of the purchase of an exchange. 3

Q. You mean that the Board of Directors merely heard the reports of the Executive Committee made by Mr. Kennedy, as to the progress of the work of buying rental exchanges? A. I don't recall the reports of the progress.

Q. Please look at the minutes of the Board of Directors of the General Film Company, for a meeting held October 11, 1910, printed in Volume I of the record, page 266, and see whether that will refresh your recollection? A. I have read it.

Q. Do those minutes refresh your recollection on the subject? A. I don't recall now hearing the report. The minutes indicate that I was present. 4

Q. Mr. Long, didn't you know when the General Film Company was organized, that it was to begin to buy up rental exchanges just as soon as it started business? A. It was to buy the leasing right in the film held by some exchanges. It was to do a rental business.

Q. That was the purpose of its organization? A. Yes, to do a rental business.

1 Q. And it was to commence the business, that is, it was to commence the rental business by purchasing some of the rental exchanges? A. It was. Exchanges that would be offered for sale.

Q. Didn't you know as a Director of the General Film Company, that the purpose was to acquire from the start, a large number of rental exchanges? A. My understanding was that it would acquire exchanges that might be offered for sale, and have the representation by those exchanges that might be acquired, at the principal distributing centers in the United States.

2 Q. You knew, then, that the purpose of the General Film Company from the start was to buy exchanges at the principal distributing points in the United States? A. Where they were offered for sale. After the first exchanges were acquired, the prices paid were considered good by exchange owners, and negotiations were not difficult. They offered them for sale. These men had been, in many instances, owners of theatres, and were owners of theatres as well as exchanges. Many of them found their theatres more profitable than the exchange business. They grasped the opportunity to sell their exchanges, and put the proceeds into extending their theatrical operations. That is illustrated in several instances. These men had experience in the theatrical line, that is, the picture theatre, and when they had an opportunity to sell their exchange, they could use the experience which they had acquired, the cash which came into their possession, and the credit which they derived from this sale, into enlarging their picture theatre enterprises, and that did give an impetus to the building of more theatres, and after the purchase of the first few exchanges, my recollection is that the exchange owners were ready to sell, because the price was good. They could get a good price, they felt. And, of course, they haggled more or less to make the best bargain they could.

3 Q. And in the meantime, that is, in the Spring and Summer of 1910, a number of licenses of various rental exchanges were, in fact, cancelled by the Patents Company; is that not correct? A. That is correct.

4 Q. And the same manufacturers who, at meetings of the manufacturers, were passing upon the question of recommending to the Patents Company, the cancellation of licenses, were meeting as Directors of the General Film Com-

pany and considering the subject of the extension of the business of the General Film Company? A. I don't know that it was the same persons considering the acquiring of exchanges. It was the same persons that were considering the business of the General Film Company as a whole. 1

Q. That is, the same persons were Directors and also attending the meetings of the licensed manufacturers? A. Yes, sir.

Q. Now, don't you think that the fact that the same men were Directors of the General Film Company, which was buying up rental exchanges, and were also licensed manufacturers having meetings, recommending cancellations to the Patents Company, had considerable effect upon the attitude of these rental exchanges whom you have testified were willing and anxious in some cases to sell out? 2

Mr. KINGSLEY: Objected to as incompetent, immaterial and calling for the conclusion of the witness.

The Witness: I don't think it would affect them in that respect at all. There were exchanges whose business was small, were not making profits, and when they had an opportunity to sell, they were willing to sell, and offered their exchanges. 3

By Mr. GROSVENOR:

Q. And you think the fact that these manufacturers, through the Patents Company, were cancelling some of the licenses in that period, had no effect upon inducing other rental exchanges to sell out to the General Film Company?

Mr. CALDWELL: That is objected to on the ground that it contains a misstatement of fact. 4

Mr. GROSVENOR: Please point out wherein there is a misstatement of fact.

Mr. CALDWELL: That the manufacturers were, through the Patents Company, cancelling licenses.

Mr. GROSVENOR: Well, the witness has testified that the licensed manufacturers were having meetings and recommending cancellations to the Patents Company.

Mr. CALDWELL: But the evidence in this case dis-

- 1 tinctly shows that the Patents Company was not
bound to follow the recommendation of cancellation.
Mr. GROSVENOR: I submit you are quibbling.

By Mr. GROSVENOR:

- Q. Mr. Long, I show you a letter, dated January 23rd, 1912, addressed by Mr. J. J. Kennedy, President, to Mr. William Pelzer, Secretary of the General Film Company, and ask you to please read that letter, for the purpose of ascertaining whether it will refresh your recollection as
2 to any of the matters stated in the letter. A. I have read it.

Q. This letter says: "Some time before the General Film Company was organized, an estimate of the value of the business of exchanges leasing licensed motion pictures was made by men familiar with the manufacture of motion pictures, and also with the business of exchanges. According to this estimate, the value of said business was \$3,468,-847." Do you recall any such estimate being made? A. I do not recall it.

- Q. I show you again, for the purpose of refreshing your recollection, minutes of October 11th, 1910, of the Board of
3 Directors of the General Film Company, page 266, stating that you, among others, were present. Please read through that page. A. That is the same as I read before, is it not?

Q. Yes. A few minutes ago. Now, these minutes that I have shown you, state: "Total payments authorized for all exchanges in entire country; stock, \$988,800; cash, \$2,480,-000." Do these minutes refresh your recollection as to such an authorization being given by the Board of Directors to the Executive Committee to purchase all the exchanges in the entire country? A. I do not recall such authorization.

- Q. Can you explain how such a statement appeared in
4 the minutes of the Board of Directors for a meeting which the minutes state you attended?

Mr. CALDWELL: That is objected to on the ground that the witness is not the Secretary of the General Film Company, and had nothing to do with the preparation and entry of the minutes.

The Witness: I don't know how that came in the minutes.

By Mr. GROSVENOR:

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Q. Can you explain how that figure given in the minutes, aggregating \$3,468,800 happens to tally with the figure given in Mr. Kennedy's letter, \$3,468,847 as being an estimate of the value of the business of exchanges leasing licensed motion pictures, made by men familiar with the manufacture of motion pictures, and also with the business of exchanges, sometime before the General Film Company was organized? A. I do not recall how these figures originated.

Q. Have you any recollection as to such an authorization being given at any time by the Board of Directors? A. I do not recall it. 2

Q. Have you any recollection of any discussion as to such an authorization? A. I do not now recall.

Q. Do you have any recollection of the Board of Directors ever discussing an estimate as to what it would cost the General Film Company to buy up all the licensed rental exchanges? A. I do not recall any discussion. There was, no doubt, a discussion at which they arrived at an amount of money at which they should capitalize the company, in order to begin business with. 3

Q. Well, was the capitalization of the company fixed at an amount large enough to enable it to buy all the rental exchanges in the country, the capitalization being based upon the estimate made before the General Film Company was organized?

Mr. CALDWELL: That is objected to upon the ground that the witness has stated that he knows nothing about any such estimate.

The Witness: I do not recall the discussions. The amount of capital stock is different from the amount given in that figure which you have quoted. 4

By Mr. GROSVENOR:

Q. When the General Film Company commenced to buy exchanges, it paid part in preferred stock and part in cash? A. It did.

Q. And the terms offered to every exchange were practically identical, that is to say, so much of the total was to

1 be paid in preferred stock and so much in cash? A. I do not recall that relationship.

Q. Do you recall how the figure for the capitalization of the General Film Company was arrived at prior to its capitalization? A. No, I do not recall how it was arrived at.

Q. Do you recall any discussion on that subject? A. Nothing definitely. As I remember, two million was arrived at as the amount of capital stock which, in connection with deferred payments, was afterwards reduced to one million.

2 Q. On page 279 of the record, in the minutes of January 16, 1911, there is another reference to an original estimate of the value of exchanges not owned, but still licensed. Please look at the minutes of that date and see whether that will refresh your recollection on the subject. Does the reading of those minutes and that reference in the minutes to an original estimate, refresh your recollection as to there having been such an original estimate? A. No, it does not.

3 Q. The minutes to which you have just referred, name you as having been present at the meeting. A. I have noted that indicates that I was present.

Q. When was the purpose born in the General Film Company to acquire all the licensed rental exchanges?

Mr. CALDWELL: Objected to as incompetent.

The Witness: I don't know that that idea was ever born in the company.

By Mr. GROSVENOR:

4 Q. How many licensed rental exchanges were there when the Patents Company started business? A. I don't recall the exact number.

Q. Something over a hundred, weren't there? A. I don't think there were so many. It is a matter of record, though.

Q. There were a good many, weren't there? A. Yes.

Q. Nearly a hundred, anyway? A. I don't remember.

Q. Were you present at the meeting of the General Film Company in November, 1911, at which there was a report made as to the number of exchanges already purchased and

the number still licensed? A. I don't recall such reports being made in that form, of so many being licensed, and so many—

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Q. Do you recall how many licensed exchanges in November, 1911, were still doing business in the United States as licensed exchanges? A. I don't recall it from that form of question.

Q. Well, let us get at it in another way. Was there a single licensed exchange doing business in November, 1911, other than the Greater New York Film Rental Company? A. No; at that time I believe that was the only licensed exchange besides those of the General Film Company.

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Redirect examination by Mr. CALDWELL:

Q. About what percentage of motion pictures produced by the Kalem Company are of a theatrical character, that is, either dramas or comedies, or melodramas? A. Nearly all. We make some scenic, scientific or educational pictures, and make a specialty of issuing about three or four hundred feet of such subject matter per week. That would constitute approximately seven or eight per cent. of our productions.

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Whereupon, at 4:30 P. M. on this Thursday, the 20th day of November, 1913, the hearings are adjourned until Friday, November 21st, 1913, at 10:30 o'clock A. M., at the Hotel Manhattan, New York City.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS CO. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, November 21, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 21, 1913, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

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J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon GEORGE COHEN, the next witness produced by the defendants, of lawful age, first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged? A. The entertainment business, moving pictures, vaudeville and kindred lines.

Q. Where are you located at present? A. At Poughkeepsie, Newburgh and Matteawan, New York State.

Q. Do you own and operate theatres in all of the towns you have mentioned? A. Yes, sir.

Q. How long have you been in the exhibiting business, Mr. Cohen? A. I believe, since the year 1907.

Q. Have you, since the year 1907, been engaged in exhibiting motion pictures? A. Principally.

Q. What are the names of the three theatres to which you have referred? A. That I own and operate?

Q. Yes. A. The Best Theatre, at Poughkeepsie; the Star Theatre, at Newburgh; Cohen's Opera House, at Newburgh, and the Good Theatre, at Matteawan. I have recently disposed of the Hippodrome, at Binghamton, New York, and of the Royal Theatre, at Jamestown, New York.

Q. How long did you have the Hippodrome, in Binghamton, and the Royal Theatre, in Jamestown? A. I owned the Royal Theatre for about three years from the time I constructed it, and the Hippodrome about two years.

Q. How long have you been in business at Poughkeepsie, Newburgh and Matteawan? A. At Newburgh about three years, or over; at Poughkeepsie, about two and a half years, and at Matteawan, about two years.

Q. Do you exhibit motion pictures in all four of the theatres which you are now operating? A. Yes, sir.

Q. And did you exhibit motion pictures in the two theatres which you recently sold? A. Yes, sir.

Q. From what rental exchange are you obtaining motion pictures for the four theatres you are now operating? A. From the General Film Company's two branches, one at Albany, and one at 42d Street, the Peoples Branch, New York.

Q. How long has the General Film Company been serving you with motion pictures for these four theatres? A. From their inception.

Q. From what rental exchange, or exchanges, were you

1 getting motion pictures before the formation of the General Film Company? A. The Empire Film Company, 14th Street, New York City; I think, the Greater Pittsburgh Film Exchange, Pittsburgh, Pa., and the Great Eastern Film Exchange.

Q. Did you for several years obtain motion pictures from these various exchanges before the formation of the General Film Company? A. Yes, sir.

2 Q. Before the formation of the General Film Company did you find it possible to obtain definite and fixed programs for your theatres, of motion pictures, which you could announce and advertise in advance with the certainty that you would have these pictures on the day designated? A. I obtained many promises for such programs, but they never were kept.

3 Q. What was your experience in trying to have a definite and fixed program or programs which you might advertise in advance prior to the formation of the General Film Company? A. The experience generally was that the promises were broken, and in order to obtain the keeping of any sort of a promise that had been made it was necessary to tip the various people connected with the exchange, otherwise no promises were kept.

Q. Were you ever disappointed in a program because of the failure of the exchange to deliver it on time? A. Oh, hundreds of times.

Q. Did you ever advertise a program in advance, and find when the day came, your advertising had been entirely lost or wasted because the program was not furnished? A. I found it was not delivered because some other exhibitor had come in and handed out more money than I had, and got the show. That was the usual experience.

4 Q. Did you have any experience before the formation of the General Film Company with reference to keeping your service clear? A. Yes, sir.

Q. And what was your experience in that respect? A. It was almost impossible to keep it clear.

Q. And by "clear" what do you mean? A. The preventing of the showing of the same pictures our competitors are showing at the same time.

Q. Did you frequently find that your immediate competitor was showing on the same day some of the same pictures you were showing? A. Yes, sir.

Q. At the time when you were obtaining motion pictures from the exchanges, before the formation of the General Film Company, did you ever make any complaint of the fact that you could not keep your service clear? A. Yes, sir.

Q. Did you ever ask them to make an effort to see that duplicate services were not run by you and your competitors? A. Those were our principal troubles.

Q. And what was the result of those complaints and remonstrances? A. There were no results obtained whatsoever.

Q. Since the formation of the General Film Company, what has been your experience with reference to the possibility of obtaining a fixed and definite program which you may advertise in advance? A. I have found that they have used every effort to bring about that result.

Q. Do you have a definite program which you announce in advance now? A. Yes, sir.

Q. At all of your houses? A. Yes, sir.

Q. And have you been having such programs, and announcing them for some time back? A. For some time back.

Q. Do you pick out any portion of your own program, or do you leave it to the exchange? A. I have always picked out a part of my programs, the desirable things that I want, and they have always endeavored to give me what I asked for, not always on the day I wanted it, but I received it in time.

Q. Have you found that the General Film Company is willing and has been willing to help you in your endeavor to get the certain program you desire? A. When I found that a manager of a branch didn't do so, I went to the general manager of the company, and he made it a point to write immediately, a letter to the branch manager, telling him to see that I got what I required. That was my experience.

Q. Have you usually been furnished with the pictures that you have required? A. Yes, and more than I required. Whenever certain health officers in our town asked for certain things, and asked if I could obtain them, I went to the general manager of the General Film Company, and it was granted to me without any extra charge whatsoever.

Q. What is the seating capacity of your theatre at Poughkeepsie? A. About twelve hundred seats.

1 Q. What is the seating capacity of the Star Theatre at Newburg? A. About nine hundred.

Q. What is the seating capacity of Cohen's Opera House, in Newburgh? A. About sixteen hundred.

Q. And what is the seating capacity of the Good Theatre, at Matteawan? A. I think it has a thousand seats.

Q. What year did you start in the moving picture business? A. I believe it was in 1907, during the panic.

Q. Mr. Cohen, do you find it an advantage to have a non-conflicting program? A. Without that we could not stay in the moving picture business.

2 Q. And why would it be difficult to stay in the motion picture business if you didn't have a non-conflicting program? A. People won't pay money to see something they have already seen.

Q. Then, you claim it is better for the public that the programs be non-conflicting? A. It is the only way the moving picture theatres can stay in business.

Q. Has it frequently happened that two theatres in the immediate neighborhood are furnishing amusement and entertainment to practically the same class of patrons and the same people? A. That was always the rule in the small towns.

3 Q. And do you find that if two theatres thus supplying entertainment and amusement to practically the same people, have practically the same program, that it interferes with the business of both theatres? A. The people claim they have been swindled.

Q. And there is no doubt that they are deprived of the opportunity of getting the amusement that they seek? A. Absolutely so.

4 Q. Did you find it possible at any time to make arrangements with competing theatres with respect to maintaining non-conflicting programs? A. I never have found it possible.

Q. Was that because the theatre was not willing to do it, or because they themselves encountered difficulties in getting the pictures they wanted, which made it impossible for them to come to a satisfactory agreement? A. I have always found that there is a great amount of jealousy among moving picture exhibitors on account of the limited amount of business, and they would not get together, that is all.

Q. Did you ever try to get away from a conflicting program by having a higher class service and a more expensive service? A. Yes, sir. 1

Q. What was your experience when you made that attempt? A. If my competitor was strong enough financially, he simply went and got something of a higher price than I did. And they simply could not remain in business under those conditions.

Q. What is the advantage of getting a higher priced service? A. Why, I doubt if there is much advantage, when you get above a certain point, there isn't any advantage. 2

Q. What do you mean by a certain point? A. If you can get a picture that is clean on the surface, and has not been mutilated or injured by its passage through the various machines, a picture that is thirty days old is just as good to me as one that is two days old, providing my competitor has not run it first.

Q. Then, by "higher class" service, you mean newer pictures? A. Newer releases.

Q. Newer releases. That means newer pictures, does it not? A. Yes, sir.

Q. And by getting a higher priced service, you merely get the same pictures a little earlier, that you would otherwise show later? A. Exactly. 3

Q. Do you advertise your programs ahead, now? A. Invariably.

Q. How long ahead do you advertise them? A. Oh, we receive posters, perhaps a week ahead, and advertise them in the newspapers two or three days ahead.

Q. Was that possible when you were obtaining pictures from other exchanges prior to the formation of the General Film Company? A. I never found it so.

Q. Do you advertise these programs, and find it possible to produce them on the date designated? A. From the Peoples Branch, in New York, invariably so. From the Albany Branch, occasionally there is a slip-up, because their business is conducted altogether through the express service, and on account of the laxity of the express company, at times the pictures will not arrive, but they will send them on as soon as they do arrive, to them. 4

Q. And that difficulty, you think, is caused by the express company? A. Only by the express company. I have investigated it now for three years.

1 Q. Have you had any experience in the motion picture business of advertising the program some time ahead, and then finding that your competitor had secured the pictures you had advertised, and displayed them a day or two before you? A. I have most decidedly had that experience.

Q. And how many times have you had that experience? A. Dozens of times, I cannot enumerate them. It has been one of the great evils of the moving picture business.

2 Q. Did you find that the exchanges from which you obtained services before the formation of the General Film Company were reliable in their service? A. Reliable in their service?

Q. Well, were reliable? I will strike out the words "in their service." A. I cannot state as to their reliability. If you make it "reliable in their service," I can answer it.

Q. I will change the question, and ask you if the exchanges were reliable in their service? A. No, sir, they were not.

Q. What did they do with respect to promising you service in advance? A. The first week the promises were kept, and after that nothing.

3 Q. Did you ever have, prior to the formation of the General Film Company, any experience in getting pictures in bad condition? A. Invariably. We would find when showing a biblical picture that, suddenly, without any reason, you would see a parade of soldiers in that picture, and things of that kind, and the pictures would come broken, and the sprocket holes torn, and with the exception of one exchange, my experience was a very disastrous one, and that one exchange is the Peoples Film Company before their affiliation with the General Film Company.

4 Q. At the time when you were exhibiting motion pictures, did you have any experience of exchanges furnishing you with defective pictures, such as you have described? A. Oh, yes. It was the rule, instead of the exception, to receive defective pictures as far as—the merchandise, you refer to that?

Q. Yes. A. It was the rule, because I made it a rule always to keep my operator there—he would come at least two hours before the show opened, and do nothing but examine these reels, and patch and patch, and correct these defects which should have been done in the film exchange.

Q. Prior to the formation of the General Film Com-

pany, you sometimes advertised programs in advance which would be shown by your competitor the day before you got the pictures? A. Yes. 1

Q. How did it happen that he would get the pictures a day or two ahead of you? A. Well, do you mean as to how he became aware of what we were going to show?

Q. Yes; how did he get the pictures ahead of you, and you know nothing about that? A. He would do as I did with my competitor. We always kept track of our competitor's business. We had men to visit each other's houses. We would see what they advertised ahead, and see the posters that they had hung up, and we simply wired to our exchange that our competitor was going to show such and such a picture, today, that we wanted to beat him to it, and to send it to us first, and our exchange did that. 2

Q. So oftentimes your competitor would determine what your show was going to be by his advertising? A. I knew what my competitor's show was going to be by his advertising. I knew what my competitor's show was going to be. I expect we kept that situation up for eight months with one competitor. The Postal Telegraph Company, at Newburgh, received a telegram from me every day to my exchange, as to what my competitor was going to have, and I invariably showed the pictures ahead of him. 3

Q. And did he do the same thing to you? A. I can't say that, I think he did.

Q. Did he ever show pictures ahead of you that you had advertised? A. Yes, sir, he did.

Q. What was the result of this competition with the competitor to whom you have just referred? A. My competitor quit.

Q. Mr. Cohen, what do you say as to the character of the pictures which are now being shown in your houses, in comparison with the pictures of the same producers furnished you some years ago? Do you think they have improved, or have they gone backward? A. They have improved without any doubt. 4

Q. Do you mean by that that they are more interesting? A. I mean by that to say that the character of our attendance, the men and women who come to my houses, are of the very highest class in the cities in which I am doing

1 business. Men who have travelled throughout the entire world attend my picture houses, five-cent theatres, and they are not ashamed to be seen going in there. A certain Dr. Patterson in Poughkeepsie, one of the leading dentists of this country, told me last Sunday night that he had been ashamed to be seen going to picture shows in this country, and only attended picture shows where he was not known, abroad, but, that in the last few months he had been visiting my places of business, and that he was glad to admit that it is all right.

2 Q. My question was directed more particularly to the quality of the pictures that you are now showing? A. Regarding the subjects, or mechanically?

Q. Regarding the subjects and the mechanical perfection? A. They are by far better than they ever were.

Q. Do you find that the various producers of motion pictures who make licensed pictures are competing with each other for the favor of the exhibitor? A. Oh, yes.

Q. Do they send you advertisements and circulars from day to day? A. Constantly.

3 Q. Do they call attention to the merits of their new productions? A. By personal letters.

Q. Do they try to get you to demand of the exchanges their particular productions? A. I complained to one company that I couldn't get their productions and they wrote a letter to the General Film Company asking why it was, and demanding that I be served with them. That was the Kalem Company.

Q. What has been your experience with foreign films? A. A detriment to the moving picture business.

Q. What was the character of foreign films four or five years ago? A. Horrible, immoral.

4 Q. Have they improved somewhat since? A. Not that I have seen of late.

Q. Do you require a smaller or larger proportion of foreign pictures than you did four or five years ago? A. My order is not to show any foreign pictures in any of my theatres—none.

Q. Did you ever feel, Mr. Cohen, or were you ever given to understand that you were obliged to get your pictures from the General Film Company? A. No.

Q. Do you find that the unlicensed exchanges are seeking the business of exhibitors? A. Oh, yes, very much.

Q. Do they come to see you frequently? A. Yes sir, every day an agent comes. 1

Q. Do they offer you inducements to take their service? A. All sorts.

Q. Do they tell you that they have a better service? A. Yes, sir.

Q. Do they tell you the prices are more favorable? A. They don't say they have a better service, but that it is as good.

Q. Do they tell you the prices are as favorable? A. They make concessions, or try to, yes.

Q. What projecting machine do you use in your various houses? A. A Powers. 2

Q. Do you use a Powers in all of them? A. Yes, sir.

Q. Have you used any other projecting machine than the Powers since you have been in the motion picture business? A. I used an Edison once.

Q. Did you say that the price of admission to your various houses was five cents? A. Except to the vaudeville houses, it is five cents.

Q. Have you been familiar with the prices of motion pictures to the exhibitors since you have been in the business? A. Yes, sir. 3

Q. How do the prices of to-day compare with the prices that prevailed before the formation of the General Film Company? Are they lower or higher? A. Why, I don't know of any difference as far as my service is concerned.

Q. You find that the price is substantially the same? A. Considering the service, it is. The service is superior now, and the price no higher to me.

Q. You say the competitor with whom you waged lively competition quit. Do you mean by that that he went out of business, sold out? A. Some went out of business, some sold out, and some went to the independent, or used pictures that did not conflict with my service. 4

Q. That is, some of them gave up the use of the licensed service? A. Yes, sir.

Cross examination by Mr. GROSVENOR:

Q. Mr. Cohen, are special features an important part of the program of your various theatres? A. Yes, sir.

1 Q. And why is that? A. Why, it is something different from the usual routine in the moving picture service, or business.

2 Q. And it is an inducement to the patrons— A. It was an inducement. At the beginning of the introduction of the special feature, it was—but, for instance, when I say it was, I will say I had a conversation with my Matteawan manager along the same line. At first we secured one special feature a week, a two or three-reel feature, and it looked so good I obtained the service of three special features a week, and my manager asserted that he didn't think the features were bringing in any extra money, that the people got so accustomed to these special features that they took it as a matter of course.

Q. How many special features do you use? A. Three a week.

Q. In each of your theatres? A. Yes, sir.

Q. Do you take any of the exclusive service of the General Film Company? A. No, sir.

3 Q. In your judgment the best pictures are those made by the licensed manufacturers and supplied through the General Film Company? A. I think so.

Q. They are the best motion pictures and appeal to the public more than the pictures of any of the independents? A. Yes, sir.

Q. And you consider it necessary in order to have, then, a successful and popular theatre, that you should have the pictures of the licensed manufacturers? A. If I didn't think so I would not be building a theatre costing a hundred and fifty thousand dollars to-day.

Q. In which you expect to exhibit and show the licensed service? A. The licensed service only.

4 Q. Do you show licensed pictures only in your other theatres? A. Yes, sir.

Q. And that has been your rule in the period of time you have been showing licensed pictures— A. Except, pardon me—except when I operated my house in Binghamton, and when I was doing business with the General Film Company in my Newburgh house—the competition was very keen in Binghamton—the General Film Company was serving several other houses. I went to the Albany branch of the General Film Company and asked

their manager, Mr. Harrington, if he could not possibly serve my Binghamton house, so as to keep me away from my competitors, because the situation had become so intense. Our competitors were putting on a better service than we were, and by that I mean, they got higher priced pictures, and I said to them, what was I to do, and he said, "Cohen, I advise you to get the independent service, we can't keep you away, and rather than to take your money when we can't make good, I advise you to get the independent service," and I did business with the Great Eastern Film Exchange, until I sold the Binghamton theatre, because the situation was so intense. 1 2

Q. You got out of Binghamton? A. Yes, sir.

Q. Were these other theatres taking the licensed service from the General Film Company? A. Yes, sir.

Q. And they were continuing the licensed service when you got out? A. Yes, sir, that is the situation in Binghamton at present.

Redirect examination by Mr. KINGSLEY:

Q. Your experience in Binghamton was such that you preferred to use the independent service, instead of a conflicting service? A. It was absolutely necessary to stay in business, and the independent business caused me to fall down, as it was, and I was glad to get out of the town. 3

Q. You found it possible to get the independent program in Binghamton? A. Yes, sir.

Q. Is it possible to get an independent program, if the exhibitor wants one? A. I think so. I think the supply is very large at present.

Recross examination by Mr. GROSVENOR:

Q. These independent pictures at Binghamton were not good enough to keep your patrons? A. The people didn't like them. 4

Q. And that is the reason you got out of Binghamton? A. The business fell down and I sold, and when I sold the place, the man I sold to asked me what business I did, and I said, "I have no business; here is the house and you can buy it at ten cents on the dollar."

Q. So you got out of it? A. Yes, sir.

1 Redirect examination by Mr. KINGSLEY:

Q. But you could have had the licensed service if you had wanted it, in Binghamton? A. Provided I was willing to get a program that conflicted with my competitor.

Q. It was not denied to you? A. No, sir, they advised me to get the independent.

Q. But they were perfectly willing to give it to you if you had wanted it? A. They were doing business with me in Newburgh, then.

2

Thereupon, WILLIAM F. KERTSCHER, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. What is your business, Mr. Kertscher? A. Motion picture exhibitor.

Q. How long have you been a motion picture exhibitor? A. Now, four years.

3 Q. Are you the proprietor of an establishment, or the manager of one? A. Proprietor.

Q. Where is your theatre? A. I have three, practically, that is, one is an open-air show, and one on Graham Avenue, in Brooklyn, near Jackson Street.

Q. Where is the other one? A. 743 Grand Street Brooklyn.

Q. Do you live in Brooklyn? A. I do.

Q. Is your open-air place open, or closed now? A. Closed.

4 Q. What is the capacity of your two theatres? A. They are—the 385 Graham Street place is 272, and the Grand Street place is 299, but we are enlarging that, and it is in the course of alteration, and the alterations now going on will extend it up to 600.

Q. Have you had any other places besides those two, to which you have referred? A. I had the World Theatre, at 279 Graham Avenue.

Q. When did you have the World Theatre? A. About two years ago.

Q. Did you have any other theatre, at any time? A. That is all.

Q. How long have you had the two theatres you mention? A. Well, I had the Grand Airdome, upon which the Grand Theatre is located now. That was two years ago. 1

Q. How long have you been renting licensed motion pictures, for exhibition in motion picture theatres? A. Ever since I have been in business.

Q. From what rental exchanges are you taking motion pictures at the present time? A. General Film Company's People's branch.

Q. How long have you been taking motion pictures from the General Film Company's People's branch? A. About three and a half years, or three years. 2

Q. Before that time, from what exchange did you get your motion pictures? A. Mr. Alfred Weiss.

Q. How long did you get pictures from Mr. Weiss' exchange? A. About six months.

Q. And before that time, had you been getting motion pictures from any other exchange? A. Not before that, but I did after that.

Q. Did you have any experience before the formation of the General Film Company, with conflicting programs and repeaters? A. I did. 3

Q. What was your experience in that respect? A. Why, I would run a picture one week, and then, the next week. I got the same picture, sometimes—you mean now, in reference to my competitors?

Q. Yes. A. Well, I would advertise the program, and my competitor, he would book it, the result was he would run it a day or two ahead of me, and so he would kill all of my advertising, and I would not receive any benefit from my efforts.

Q. Did you find it possible as an exhibitor before the formation of the General Film Company, to advertise a program definitely in advance, and then produce the program you had advertised? A. I did not. 4

Q. You have already told us that you had considerable experience in advertising programs in advance, only to find that your competitor benefited as the result of your advertising, by obtaining the same pictures? A. Yes, sir, that is right.

Q. And showing them ahead of you? A. Yes, sir.

1 Q. How many times did this happen? A. Frequently, very often.

Q. Since the formation of the General Film Company, and since you have been obtaining your service from one of its branches, have you found it possible to obtain a definite program, which you can advertise in advance, and which you can produce on the date designated? A. I have.

Q. Do you make up your programs in advance? A. I do.

Q. Do you make them up definitely and advertise them definitely? A. Positively, yes.

2 Q. In making up these programs, do you exercise your own judgment; do you make the selections yourself? A. I do. I pick as much as a month in advance.

Q. What proportion of the pictures do you personally select? A. What do you mean by proportion?

Q. Do you select the entire program, or do you let the rental exchange select part of it? A. I select the principal part. And the features.

Q. But a large percentage of it you select yourself? A. I do.

3 Q. Do you have any difficulty in getting the pictures you want? A. I have no difficulty at present.

Q. And are they delivered at the time designated? A. They are.

Q. Did you find that the exchange with which you were dealing before the formation of the General Film Company, kept its agreements with you with reference to delivering programs on time? A. They never did. I won't say they never did, but as a general rule, we could never depend on them. They disappointed us very, very often.

4 Q. Have you ever felt, or have you ever been given to understand by anybody that you, as an exhibitor, were compelled or obliged to take service from the General Film Company? A. No.

Q. Do the licensed producers of motion pictures solicit you to demand from your exchange, their particular productions? A. They do.

Q. How do they do that? A. Through communications and letters.

Q. Do they send you frequent circulars, letters and communications calling attention to the excellence of their prod-

uct, and asking you to call upon your exchange to include it in your program? A. They do. 1

Q. What projecting machine do you use? A. Powers machine.

Cross examination by Mr. GROSVENOR:

Q. Do you use special features at your theatres? A. I do.

Q. And are those an important part of the program which you give? A. You say, is that an important part?

Q. Yes. A. Very important. 2

Q. It is one of the things which particularly helps you to draw your customers? A. It does.

Q. How long have you been a licensed exhibitor? A. Ever since I have been in the business. That is about four years.

Q. And you have confined your exhibitions to pictures made by the licensed manufacturers? A. Yes.

Q. And you consider that the licensed manufacturers make the best pictures that are made? A. I do.

Q. All the pictures which you exhibit are not first run, are they? A. They are not. 3

Q. You may show a picture quite a number of days after it was first shown by somebody else? A. Yes.

Q. You advertise that you are going to show other pictures besides first-run pictures, don't you? A. I do, yes.

Redirect examination by Mr. KINGSLEY:

Q. Do you find that prices have increased since the General Film Company went into business? A. No. Prices are practically the same.

Q. Do the unlicensed exchanges solicit you for your business? A. They do. Often. 4

Q. Do the unlicensed exchanges offer you a complete program? A. They do.

Q. Is there more than one complete program offered to exhibitors by the unlicensed exchanges? A. What do you mean?

Q. Well, is there more than one program available of unlicensed film? A. Is there more than one program of unlicensed film? I don't quite grasp that.

1 Mr. KINGSLEY: Well, I will withdraw the question. Strike it out.

 Mr. GROSVENOR: No. He gave an answer. Leave it in, to show the intelligence of the witness.

 Mr. KINGSLEY: Strike it out. That is all.

 Mr. GROSVENOR: That is all.

ADOLPH BAUERNFREUND, a witness called on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

2

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged? A. In the moving picture business.

Q. Are you the owner of a theatre? A. Yes, sir.

Q. Where is your theatre located? A. I have got one located at 1351 Boston Road.

Q. Manhattan? A. Bronx. Another one at 941 Freeman Street, Bronx.

Q. How long have you owned these two theatres? A.
3 One I own—the last one I owned a little over a year. The other one I opened two months ago.

Q. How long have you been in the motion picture exhibiting business? A. About four years and a half.

Q. What other theatres did you own? A. I owned one in 1013 and 1015 Boston Road.

Q. How long did you own that? A. I owned that fifteen months.

Q. What other theatres did you own? A. 895 Fulton Street, Brooklyn.

Q. How long did you own that one? A. Six months.

4 Q. Did you own any other theatre? A. I owned one in 689 Amsterdam Avenue.

Q. Did you own any others? A. Open air—airdomes.

Q. How many of those did you own? A. Two.

Q. Over how many years has your experience extended?
A. Since I am in the business. Four years and a half.

Q. What is the seating capacity of the two theatres you now own? A. One is 300, and the new one is about, I think, 534.

Q. What projecting machines do you use in the theatres you now have? A. In one theatre I have got a Powers No. 5, and an Edison, and in the other I have got two Standards, Model 1913. 1

Q. From what rental exchange do you take service of motion pictures for your two theatres? A. From the General Film Company, two branches.

Q. How long have you been taking service from the General Film Company? A. About three years; a little over three years.

Q. From what exchange did you take your service before the General Film Company was formed? A. From the Greater New York. 2

Q. How long did you take service from the Greater New York Film Rental Company? A. About fourteen months.

Q. While you were taking service from the Greater New York Film Rental Company, did you have any trouble on account of repeaters? A. I had quite considerable trouble on account of the repeaters.

Q. What is a repeater, Mr. Bauernfreund? A. A repeater is a picture I have shown before and get again. Then, again, a repeater is a picture that my opposition has shown. Of course, I don't mind if my opposition had a picture two months ago, or three months ago; if I get it then I don't mind it. But it will happen that I get a picture sometimes in the same week or sometimes three or four or five pictures in one week, that my opposition had, and that naturally makes a bad business for me, because I advertise that with a big poster outside, and my customers go by and say, "Oh, I have seen that in the other place." That keeps them away. They don't realize that that is only one picture and there are others that they have not seen. 3

Q. Then, a repeater is a bad thing for your business, and a bad thing for your competitor's business? A. Why, certainly. 4

Q. While you were taking service from the Greater New York Film Rental Company, did you have any trouble in getting the pictures that you wanted? A. Quite frequently, yes. Especially when it was some special features.

Q. Are you able to get the pictures you want from the General Film Company? A. Yes, sir.

Q. Do you select your programs yourself, or a part of

1 your programs? A. Well, I select my special features in advance. As far ahead as a month in advance. Then I get a program laid out, and if anything in the program is not suitable to me, I tell the booking clerk I want that changed.

Q. Do you have any difficulty in getting it changed? A. No. He may not give me just exactly what I have my mind on, because it may be booked somewhere else, but they will give me something else to put in my program to give me a balanced show.

2 Q. So you find it possible to get a well-balanced program from week to week? A. I select it weeks in advance, and get what is not booked elsewhere.

Q. During the time that you have been in the motion picture exhibition business, have you been familiar with the prices of motion pictures to exhibitors? A. I have, yes.

Q. Have the prices of licensed motion pictures to exhibitors increased or diminished since the General Film Company was formed? A. Well, that is a pretty broad question. It has not with me. I cannot tell with others.

3 Q. Has it been your experience that prices have not advanced? A. I am not paying a cent more than I paid four years ago and three years ago.

Q. Are you able to keep your program clear at the present time? A. Positively, yes.

Q. Does the General Film Company co-operate with you in keeping your program clear? A. Yes, sir.

Cross examination by Mr. GROSVENOR:

Q. You took pictures from the Greater New York Film Rental Company until the General Film Company was organized? A. Well, I don't know. I think the General Film Company was organized already then.

4 Q. When? A. I think the General Film Company was organized about three years and a half ago.

Q. When did you begin to take pictures from the General Film Company? About two years ago? A. No; not then. A little over three and a half years ago. I took from one exchange, and I went back again to the Greater New York. Then I sold out my place, and when I had a new place, I started with the General Film Company, and I am using General film since.

Q. And you have shown the licensed pictures? A. I have shown the licensed pictures. 1

Q. Do you consider the licensed pictures, the pictures of these eight or nine manufacturers, better than any of the other pictures? A. Personally, I think so. And by experience, too. I have tried to put in the other pictures, and experience has taught me that lesson, too. The people seem to be better acquainted with the actors of the licensed pictures.

Q. So you confine yourself to the pictures of the licensed manufacturers? A. Yes, sir. 2

Q. Are special features an important part of the program which you give in your theatres? A. I think they are the most important part.

Q. Why is that? A. Well, I suppose the public nowadays is educated to the fact that they want to see—they think a special feature of two or three reels like if they go to a theatre and see a big show, whereas in the single reels, of course, it seemed to get to be monotonous and an every-day affair.

Q. Was your license ever cancelled by the Patents Company? A. No, sir. 3

J. A. BERST, recalled on behalf of the defendants for further direct examination, already sworn, testified as follows:

Direct examination (continued) by Mr. CALDWELL:

Q. Mr. Berst, referring to Defendants' Exhibit 112, page 1765 of the record, the first paragraph of which provides that Herman Herst is retained as attorney for the various defendants in the actions referred to in the agreement, and the firm of Kerr, Page & Cooper are retained as general counsel for the defense of said actions, do you know whether testimony was taken in the suit brought against you and the Pathe Cinematograph Company? A. No, sir. No testimony was brought in the suit against us, but I know that expert testimony and other testimony were taken in the suit against Eberhard Schneider. This testi- 4

1 mony was put at my disposition at the office of Kerr, Page & Cooper.

Q. Was the suit against Eberhard Schneider selected as the test suit? A. Yes, sir. It was by agreement between the counsel that this suit was made a test suit for all the similar suits which were brought at the same time.

Q. And you know that testimony was taken in the suit against Eberhard Schneider? Have you lately refreshed your memory by referring to any of your books as to payments that you made to Kerr, Page & Cooper?

2 Mr. GROSVENOR: I object to that as immaterial. If the purpose of the question is to show that there was genuine work done in connection with that suit, the question is irrelevant and immaterial and incompetent, as the answer would not tend to show any such thing. The proper way to prove the genuineness of the suit is to call, of course, the attorneys.

By Mr. CALDWELL:

3 Q. Now, you may answer. A. Yes, sir. I have refreshed my recollection by looking into our books, and found that we have made from time to time, payments to Kerr, Page & Cooper. The latest payment I found was in the Spring of 1907.

Q. Did you know Mr. Steiner of the firm of Paley & Steiner, one of the persons against whom these suits were brought, to which you have already testified? A. Yes, I know Mr. Steiner very well.

Q. Is that the Steiner that subsequently operated a licensed exchange under the name of the Imperial Film Exchange? A. Yes, sir, that is the same man.

4 Q. I call your attention to this question which was put to you on your direct examination, and the answer that you gave, found on page 1776 of the record: "Q. In point of fact, though, you were afraid of the Latham patent?" To which you answered as follows: "I have always been afraid of the Latham patent, especially after we became licensees of the Edison Company, because before the Armat Company, they had sent out one letter to us about it; we did not pay very much attention, but when they became either associated or working with the Biograph Company,

they became very active. They sent one letter to us prior 1
to our becoming licensees of the Edison Company." Did
you mean by that answer to state that the notice that you
received from the Armat Company referred to the Latham
patent? A. No. The letters that were received from the
Armat Company mentioned the patents which they owned.
In fact, they were even printed on their stationery. I
remember that fact, which shows that these matters really
impressed my mind, although I have not seen those letters
for many years.

Q. Mr. Berst, do you recall the first multiple reel sub- 2
ject that was released by Pathe Freres? A. The first
multiple reel subject was released by Pathe Freres, was
the Passion Play, and it was about in 1905. I don't re-
member exactly if it was in the Spring. I believe it was
in the middle of the year 1905. I know it is in 1905, but
I don't remember what month.

Q. In how many reels was that subject? A. Over four
reels.

Q. And do you recall releasing another multiple reel en-
titled "Drink?" A. Yes, sir. We released that film. It
was a two-reel picture. I remember it because we had
quite some trouble in placing that film in the market. The 3
exchanges at that time had no use for multiple reels, and
they would not stand for it, and in order to be able to
make them accept it, we had to release one reel one week
and the second reel, the following week. They would not
take it as a whole in one week. The market at that time
was not adapted to multiple reel subjects.

Q. Did you state about what time your multiple reel
subject entitled "Drink," was brought out? A. In the Win-
ter of 1909. I don't remember the month. I could find
that out, if necessary.

Q. Do you know Mr. Fox, who has been called as a wit- 4
ness for the Government in this case? A. Yes, sir, I know
him.

Q. Do you recall having a conversation with him some
time in the Fall of 1911? A. Yes, sir.

Q. Did you say to Mr. Fox at that interview in language
or in substance as follows: "Fox, now I will talk pretty
plain to you. I do like you and you are a pretty nice fellow.
I ain't going to beat around the bush at all. You know

1 that I am one of the Executive Committee of the General
Film Company, and I don't mind telling you that your ex-
change is in the way of the General Film Company." A. No,
I never told him such a thing, because it was far from my
ideas.

Q. Did you say to him on that occasion in terms or in
substance this: "You understand what is the matter. The
General Film Company was created for the purpose of ab-
sorbing all of the rental business, and it has absorbed all
of the rental business. You are the only one on the outside.
2 Now, we left you for the last, because we are all very friendly
inclined. Just because you have been a good boy all this
while and before that. You have had numerous friends in
our organization and these all have stuck by you. Now,
you have got to go with the rest of them. We were organized
to control the business and monopolize it, and we are go-
ing to monopolize it, and you have got to get out of the
way." A. I never made such a statement to Mr. Fox.

Q. Or anything like that? A. Or anything like that. I
am a little more diplomatic than that when I talk to any-
body, anyway.

3 Q. Did you say to him in terms or in substance on that
occasion: "Fox, I am an executive man of the General Film
Company, and these matters are brought to me from time
to time. I had it put before me every day of the week that
our customers cannot be advanced in price because of this.
We know that they are going to become customers of the
Greater New York Film Rental Company. Now, we want
to advance our prices, and we want to get more money for
our merchandise, and we cannot do it because you are in the
way. Now, we are not going to continue that way any
longer. You have done it long enough. You have been a
4 stumbling block of our raising the prices and serving the
film as we see fit, and every time we tried to raise the price
or did not give a man a reel of film that he thought he ought
to have, he simply went to you, and we want to stop that
condition, and we don't want you around any more." A. I
never made such a statement, on the ground that I ignored
absolutely what anybody paid for service of films to the
General Film Company or to Mr. Fox.

Q. Did you say to him on that occasion in terms or in
substance as follows: "I realize it is only a few days more

left between now and the expiration of your license. I am willing to help you get the money, get you some money for your plant. You have had all your profits for the past couple of years. You say your plant has made all that money. Suppose we had put you out of business two years ago? You would not have had that profit. Figure that profit with what we are giving you now, and see if we are not giving you a good, liberal price?" A. No, I did not make that statement. 1

Q. Or anything like that? A. I discussed the matter on a broad line, but not in a narrow way like that. 2

Q. You did not say that in substance to him, or anything like the substance? A. Nothing like that.

Q. Did you say to Fox on that occasion, either in terms or in substance: "Let me have a talk with Kennedy. After I have had a talk, we will probably send for you and everything will be all right?" A. I told just the contrary, that I would not interfere between himself and Mr. Kennedy.

Q. Did you have a conversation with one Louis Rosenbluh shortly before the conversation with Mr. Fox to which I have called your attention? A. Yes, sir.

Q. About how long before? A. The day prior. 3

Q. On that occasion when discussing the cancellation of the Greater New York Film Rental Company's license, did you say in terms or in substance that, "while there was not any particular reason, of course the reason has been given, but you did not ascribe that to have been the actual reason; the main reason was that the directors have received reports from the managers of the General Film Company?"

A. In my conversation with Mr. Rosenbluh, the General Film Company was never pronounced.

Q. Did you tell Rosenbluh that it was impossible to increase the price of rentals satisfactorily, so long as the Greater New York Film Rental Company was in the field? 4

A. This matter was not discussed between Mr. Rosenbluh and myself.

Q. Did you say to him that when the General Film Company attempted to increase the price for an exhibitor, invariably the exhibitor would say that the Greater New York Film Rental Company had not increased its price, and he would go to that company rather than stand a raise, or

1 words to that effect? A. The General Film Company or its business was not discussed in our conversation.

Q. Did you say to him that rather than drive the business to his company, you had decided not to increase the prices as you would otherwise have done had the Greater New York Film Rental Company not been in the field? A. No, sir.

2 Q. Did you say to him on that occasion, in terms or in substance: "Well, the General Film Company found it was necessary to get you out of the way, and you were offered a chance to come in with us, which Mr. Fox refused, and I don't know what I can do for him now?" A. No. Mr. Rosenbluh just came to see me and told me that their license had been cancelled, and requested that I see Mr. Fox, and he asked me if I would have any objection to seeing that gentleman. I said, "No. Mr. Fox had been a customer, and I have no objection to seeing him." And that was all the conversation I had with Mr. Rosenbluh.

3 Q. Did you arrange a meeting between Mr. Fox and Mr. Kennedy? A. I did not arrange a meeting. I was possibly instrumental in Mr. Fox's getting in touch with Mr. Kennedy.

Q. Did you attempt to bring any influence to bear on Mr. Kennedy? A. None whatever.

Q. What did you tell him? A. I just told him that Mr. Fox had been trying to see him and communicate with him, and had been unable to do so, and I had promised Mr. Fox to locate Mr. Kennedy, and asked him if he would be willing to see Mr. Fox. He said he would. And I notified Mr. Fox to that effect.

Q. Did you tell Mr. Fox that you would try to get him more money for his exchange? A. No, sir.

4 Q. Or did you say to Fox as follows: "We will try to get you a little more and the deal will go through all right." A. No, sir, I considered the amount that had been offered, fair.

Q. Did you ever tell Mr. Fox that you would make an effort to get the Executive Committee to offer a higher price than Mr. Kennedy had offered? A. No, sir.

Q. Did you ever intimate or say to Mr. Rosenbluh, that it was necessary to get the Greater New York Film Rental Company out of the way? A. No, sir.

Q. When Pathe Freres wrote a letter to the Greater New York Film Rental Company, under date of November 20th, 1911, which, I believe, is in evidence in this case, and in which you expressed some friendship, did you intend is as a suggestion that the recipient should get into some other line of business? A. Mr. Fox, when I saw him at my office, told me that if he could not get any license, he could arrange very well to continue his business with independent or unlicensed films. He told me, "Of course, it would be a little work, possibly hard work for a short time, to make all my customers accept that service, but I don't think I will have difficulty in lining up most of them." And the friendship expressed in my letter was in connection with that, and thinking he was going to start an unlicensed exchange, and I wished him success, because he had been a customer for a long time, and I had no hard feeling against him personally.

Q. It is alleged in Subdivision 3 of the petition, that the defendants in this case, determined to destroy competition between them, to monopolize commerce relating to the motion picture art, to exclude all others, and thereafter, to carry on said commerce according to the terms of the unlawful combination, which they were to create. Did you, either individually, or as an officer of Pathe Freres, or any of the other corporations with which you were connected, or to your knowledge, any of the other corporations-defendant in this case, or any other individual defendant in this case, ever determine, or intend, or purpose to do any such thing? A. No, sir.

Q. The petition further charges that the defendants were to organize the Motion Picture Patents Company for this purpose. By whom was the Motion Picture Patents Company organized, if you know? A. I don't know.

Q. Did you have anything to do with its organization? A. No, sir.

Q. Did Pathe Freres assign any patents to the Motion Picture Patents Company? A. No, sir.

Q. It is further alleged in the same subdivision of the petition, page 10, that the intent of the defendants in forming the Motion Picture Patents Company, and in entering into the licensed agreements was to control, restrain and monopolize all branches of the commerce among the States

1 of the United States, and with foreign nations, relating to
the motion picture art, and to exclude others therefrom.
Did you, either individually, or as an officer of Pathe Freres,
or, to your knowledge, any other of the defendants in this
case, have any such intention or purpose in the organization
of the Patents Company, or in entering into the license
agreements? A. No, sir.

2 Q. The petition, in Paragraph 5, alleges that with the
same unlawful purpose, each of the ten manufacturers there-
tofore referred to, entered into the license agreements with
the Patents Company, on December 18th, 1908. Did you,
either individually, or as an officer of Pathe Freres, or,
to your knowledge, any of the other defendants in this case,
have any such purpose or intentions as those alleged in the
petition, in entering into this license agreement? A. No,
sir.

3 Q. The same allegation of unlawful purpose and intent
is contained in Subdivision 8, with respect to the execu-
tion of the license agreements with the manufacturers of
exhibiting machines. Did you or Pathe Freres, have a li-
cense from the Patents Company, to manufacture exhibiting
machines? A. Yes, sir.

Q. Well, in making that agreement, did you have any
purpose or intent to monopolize or restrain any alleged
commerce in exhibiting machines? A. No, sir.

4 Q. In Subdivision 9, on page 27, the petition alleges
that the defendants set out to monopolize the business of all
of the rental agencies or exchanges in the United States,
their purpose being to drive out of business all persons so
engaged, and to absorb to themselves the profits theretofore
made therein, and that this unlawful end they accomplished
by means of the General Film Company. Are these allega-
tions of the petition true? A. No, sir.

Q. Was the General Film Company organized for any
such purpose? A. No, sir.

Q. Pathe Freres made an agreement with the General
Film Company in the month of April, 1910, for supply-
ing the General Film Company with motion pictures, did
it not? A. Yes, sir.

Q. In making that agreement, did you have any intent
of monopolizing the exchange business in this country?
A. No, sir.

Q. Or that the other defendants who made similar agreements would have a monopoly of the exchange business in the United States? A. I don't understand that. I am sorry to ask you to repeat it. 1

Q. Did you enter into the agreement of April, 1910, Pathe Freres and the General Film Company, with purpose of monopolizing the exchange business throughout the United States? A. No, sir.

Cross examination by Mr. GROSVENOR:

Q. Mr. Berst, I direct your attention to an answer which you gave on direct examination, appearing in the record at page 1774, in which you say, referring to the Biograph and Armat companies: "They always claimed that the Latham patent would stop everybody from exhibiting pictures on machines which were not licensed by them, and I have taken means to reassure many of our customers and tell them that they should defend the suit, and I published even articles in the trade papers informing the trade in general that the Latham patent was of no value, that we knew of other means to project films without infringing on their patents, and that when the time came, we would use those means, but in fact I knew very well it was not true. I knew the Latham patent was a very strong patent, and when I was telling my customers that these patents were not true, I at the same time requested the Compagnie Generale in France to make"— A. My answer is not correct there, Mr. Grosvenor, I said they should defend. I meant we would defend. 2 3

Q. Is there any other amendment to that answer you care to make now, the answer having been given two days ago and having been now read to you? A. Not except what I have just said. 4

Q. You say, "I published even articles in the trade papers informing the trade in general that the Latham patent was of no value, that we knew of other means to project films without infringing on their patents, and that when the time came we would use those means, but in fact, I knew very well, it was not true." Why did you make public statements which you now state were untrue in fact? A. Because I had to protect my own business, and I had to

1 go ahead and sell films. If I had said the contrary or said nothing I would have—many exhibitors probably would not have purchased our films.

Q. Then, in order to protect your own business at the time you made this statement, you spread broadcast what you knew to be a lie, is that the fact?

Mr. CALDWELL: I object to that statement on the part of counsel for the petitioner.

2 The Witness: No, sir. I published that statement as a business policy.

By Mr. GROSVENOR:

Q. You published as a business policy the statement that you knew to be untrue in fact? A. Absolutely.

Q. You published a statement which you knew to be untrue in fact, in order to protect your business, is that right?

3 Mr. KINGSLEY: I object to the question as having been already answered by the witness, as being a needless repetition.

The Witness: My previous answer covers your question.

Mr. GROSVENOR: The form of the question is different from what it was before. Read the question, if you please.

4 The Witness: Will you read both, if you please?

Mr. CALDWELL: Yes, repeat both questions.

The Examiner repeats the questions and answers as follows:

“Q. You published as a business policy the statement that you knew to be untrue in fact? A. Absolutely.

“Q. You published a statement which you knew to be untrue in fact, in order to protect your business, is that right?”

The Witness: Yes, sir.

1

By Mr. GROSVENOR:

Q. You were, then, at that time willing to say something untrue and false and which you knew to be untrue and false, in order that you might protect your business? A. Yes, but I wish to add at the same time that I told the customers that we would defend them, consequently would assume the trouble or the expenses to them that our answer—our statement would make.

Q. Since you made that statement, your relations to the Latham patent have changed, have they not? A. I don't know what you mean by "relations."

2

Mr. KINGSLEY: I object to the question as incompetent.

By Mr. GROSVENOR:

Q. Since you made that statement in 1908, you have become a licensee under the Latham patent which you at that time scorned? A. Yes, sir.

3

Q. It is now to your interest to uphold the Latham patent? A. It is.

Q. It, today, protects your business, does it not, to say that the Latham patent is a good patent?

Mr. CALDWELL: I object to that as calling for a conclusion.

Mr. KINGSLEY: And I object to it as calling for a characterization of his own testimony and acts.

4

The Witness: I never make statements to anybody about the Latham patent since I have become a licensee. I just go ahead and proceed with my business without mentioning the Latham patent any more.

By Mr. GROSVENOR:

Q. You think, then, today—it is your opinion, then, today, that the Latham patent is no good? A. No, I think—I always said—I always thought that the Latham patent was good.

1 Q. But you were willing to say that it was of no value in 1908? A. Yes, sir.

Q. And you were willing to do that, because it was to your interest to do it?

Mr. KINGSLEY: I object to the question as having already been answered twice and as being a needless repetition.

The Witness: For business policies, yes, sir.

2 By Mr. GROSVENOR:

Q. And your interest is to uphold the Latham patent, isn't it, today? A. I don't know. I have not said anything or published anything and I am not going to publish anything on the Latham patent.

Q. I am not asking you what you are publishing. I am asking you whether it is not your interest today, as a licensee of the Patents Company, to uphold the Latham patent under which you are licensed? A. I don't know.

3 Q. Had you ever studied the Latham patent? A. Yes, sir. A long time ago, though.

Q. When was it issued? It was in 1902, wasn't it? A. Yes, but the application dates far back of that.

Q. Now, Mr. Berst, are you able to point to any suit that was brought by anybody on the Latham patent, prior to 1908?

Mr. KINGSLEY: Objected to as incompetent.

Mr. CALDWELL: The question is objected to as incompetent; the witness is not a lawyer, or a patent lawyer.

4

The Witness: I have never kept informed, myself, of a suit brought by others. I only take an interest in suits brought by myself, or against me. I have a lawyer who is supposed to look into any suits which are brought against others, and notify me in case there would be any trouble for me.

By Mr. GROSVENOR:

Q. Don't you know that it is the fact that there was not

any suit brought on the Latham patent from 1902, when it was issued, down to the Spring of 1908, when the Biograph Company acquired it? 1

Mr. CALDWELL: Objected to as incompetent and immaterial. The evidence does not disclose any such state of facts as embodied in the question.

The Witness: I don't know if there was, or if there was not.

By Mr. GROSVENOR: 2

Q. You testified on direct examination that the Edison Company brought a suit against you on the film reissue No. 12,192 in November, 1904; is that right? A. That is correct, sir.

Q. Did you, thereafter, during 1905 and '06 and '07, continue to import positive films? A. Yes, sir.

Q. And many positive films were imported by others? A. Yes, sir.

Q. How much testimony was taken in the Schneider suit that you referred to as being the one of the four suits which was selected as the test suit? A. I know that expert testimony was taken by both sides and that it was very extensive testimony. 3

Q. Three years had elapsed between the bringing of that suit and the formation of the Edison licensees, isn't that right? A. Yes, sir.

Q. And during that entire period, you were importing and others were importing these positive films? A. Yes, sir.

Q. And the case, that is, the Schneider case, had not yet been set for argument up to February, 1908, had it? A. I don't know, sir. 4

Q. No decision was ever rendered on it, was there? A. No, sir.

Q. Page 1769 of the record, you were testifying as to your return from Venezuela in the early part of 1908; you say that your representative came to you and told you that several of the manufacturers and importers were willing to take licenses from the Edison Company, providing "I would agree to it, and the next day or a few days later, Mr. Moore of the Edison Company came into my office

1 and told me that several of the manufacturers and importers were willing to take licenses, and that they have placed the condition that I should take one also." When the Edison license agreements were finally executed, they were executed by all the parties at the same time, were they not? A. Except us, so far as I know.

Q. Well, you agreed in spirit, but you required the necessary authority from France? A. Approximately that, yes.

2 Q. And you observed the terms of the agreement, as I understand your testimony on direct examination, from February 1st, 1908, when all the agreements went into effect? A. Yes, sir.

Q. Before February 1st, 1908, the Biograph Company and Kleine had been asked to join in the same licenses? A. Yes, sir. I would like to modify my last answer, if possible.

Q. All right, go ahead. A. I said, yes, they had been asked, though I have no recollection if they had been asked, or if they asked themselves.

3 Q. Anyway, the seven licensees would have been glad to have had the Biograph Company and Kleine come in, if a satisfactory arrangement all around could have been made? A. Yes, sir.

Q. And to have had the Biograph Company and the Kleine Company take out similar licenses as were taken out by you seven licensees? A. Yes, sir.

Q. Coming down to the formation of the Patents Company and the signing of the agreements on December 18th, 1908, those agreements were signed by all the manufacturers at the same time and in the same place? A. I believe they were.

4 Q. On page 1784 of the record, you testified, witness: "Q. Mr. Berst, what part, if any, did you take in the organization of the General Film Company? A. I was one of the organizers of the company. I went to Portland with some other gentlemen, to organize that company in April; I believe, in April, 1910, or around that time." Before the main company was organized, there had been a company of the same name organized a few weeks or a couple of months earlier, in New Jersey, by the same people, that is, by the licensed manufacturers, isn't that right? A. No, sir. I mean to say I know that a certain company of either the

same name, or similarly the same name, has been organized in the State of New Jersey, but I have no knowledge that the licensed manufacturers had anything to do with that. I know that myself as a licensed manufacturer had nothing to do with it.

Q. Were you present during the cross examination of Mr. Dyer? A. No, sir.

Q. Or of Mr. Long? A. No, sir.

Q. Or of Mr. Smith? A. I was present, I believe, at the end of the cross examination of Mr. Smith.

Q. You were one of the Directors of the General Film Company? A. Yes, sir.

Q. From its organization? A. Yes, sir.

Q. And on the Board of Directors of the General Film Company you represented your company, Pathe Freres? A. Not exactly. I was a Director, not representing, but attending to the business of the company. I was elected by the stock owned by Pathe Freres. I was not supposed to represent them.

Q. Each of the other Directors was elected by the stock of one of the other licensed manufacturers? A. Some of them, yes.

Q. Was there any Director of the General Film Company who was not a licensed manufacturer, or an important officer of one of the licensed manufacturers? A. Now, there is some. At the time, there was none.

Q. Was there anyone on the Board of Directors of the General Film Company during the year 1910, who was not a licensed manufacturer or an important officer of one of the licensed manufacturers? A. No, sir.

Q. And each one of the licensed manufacturers had at least one of its officers, or owners, or principal managers, as a Director on the Board of Directors of the General Film Company? A. In 1910, yes.

Q. You were a member of the Executive Committee in that year? A. For most of the year, that year, yes.

Q. The other members of the Executive Committee were J. J. Kennedy, President, and Albert E. Smith, of the Vitagraph Company? A. Yes, sir.

Q. One of the matters in which the Executive Committee was interested, and concerning which that Committee busied itself in 1910, was the purchase of various rental exchanges?

1 A. What means the word "busied?" I never heard it before.

Q. Occupied. A. This was left to the Chairman of the Executive Committee.

Q. Didn't you, or Mr. Smith, at times confer with, or assist Mr. Kennedy on these matters of the purchase of various exchanges? A. I never was present at any meeting of the Executive Committee at which Mr. Smith was present. I had, on different occasions, conversations with Mr. Kennedy at the time he was buying an exchange.

2 Q. I show you the minutes of the Board of Directors of October 11th, 1910, printed at Volume I of the record, pages 265 and 266, being Petitioner's Exhibit 80, and ask you to read those minutes for the purpose of refreshing your recollection. These minutes report you as having been present at that meeting. Does that statement refresh your recollection as to your having been present? A. I believe I was present.

3 Q. The minutes read: "Mr. Kennedy reported on behalf of the Executive Committee, that the company had purchased 39 exchanges, and made the following detailed reports of the conditions as of October 10, 1910: Number of licensed exchanges in entire country, including Yale Company, of St. Louis, 59; owned by General Film Company, 39; not owned by General Film Company, 20; percentage of exchanges owned by General Film Company, 66; percentage of business of the entire country controlled by General Film Company, based on reels, 71 per cent." How long had the General Film Company been doing business on October 11th, 1910? A. About six or seven months.

4 Q. Without reading all of the minutes, I will read you this sentence, appearing at page 266, in folio 4: "Total payments authorized for all exchanges in entire country, stock, \$988,800, cash, \$2,480,000." Can you state, Mr. Berst, when authorization, if any, was given, naming the figures given in the minutes of the total payments to be made for all the exchanges in the entire country? A. Payments were authorized for each exchange individually, after they were purchased. There was no other authorization given by the Board as to the purchase of exchanges.

Q. Are you able to explain that statment: "Total payments authorized for all exchanges in entire country, stock,

\$988,800; cash, \$2,480,000." A. I am not able to explain that statement. That is a fancy statement made by Mr. Kennedy and not at the request of the Executive Committee, and without the knowledge of the Executive Committee.

Q. What do you mean by "fancy," Mr. Berst? A. Fancy, I mean in that sense, that it is established on imaginative figures.

Q. You mean the estimate was imaginary; that is, that it was a prospective estimate? A. No, I don't mean that. I mean that it is a statement which is based on nothing which is determined, for instance, we know how many inhabitants there are in the United States to-day. We don't know how many there will be in ten years, and if we base the business of the United States on what it will be in ten years, I call that an imaginative figure. I just give this illustration to explain my thought.

Q. Well, in other words, you and I to-day could make out an estimate as to what the population would be in ten years from now? A. If you take what was ten years prior and follow the same thing for ten years after, well, you will establish a statement which will not probably be correct in ten years from now.

Q. It would be an estimate? A. It would be an estimate.

Q. Now, had not the Board of Directors or Mr. Kennedy for the Board of Directors, made in some way an estimate of what it would cost to buy all the licensed rental exchanges in the United States? A. The Board of Directors, so far as I know, never made such an estimate. Mr. Kennedy just made one, and it was spread into the minutes, probably without even the knowledge of the Board of Directors at the time.

Q. Mr. Kennedy, then, before the General Film Company started business, had made out an estimate as to what it would cost to buy all the licensed rental exchanges? A. I don't know, sir, what Mr. Kennedy did. He did not communicate it to me if he did it.

Q. I show you the minutes of the meeting of January 16, 1911, at page 279, and ask you to refresh your recollection by reading those minutes.

Whereupon, at 12:45 P. M., an adjournment is taken until 2:30 P. M. of the same day, at the same place.

1

NEW YORK CITY, November 21, 1913.

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., November 21, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon J. A. BERST resumed the stand.

Cross examination continued by Mr. GROSVENOR:

2 Q. Mr. Berst, have you read those minutes I handed you, and which I now show you, being at page 279 of the record, the minutes of January 16th, 1911. A. Let me have them, please.

Q. These minutes read: "The original estimate of the value of exchanges not bought, but still licensed, \$351,300, cash, and stock, \$140,100." Do these minutes refresh your recollection as to the existence of an original estimate drawn up by some officer of the General Film Company before that company was organized? A. No, sir.

3 Q. Have you any explanation to make as to the appearance of that statement in the minutes of this meeting, the minutes stating that you were present? A. The first time I saw those minutes I didn't remember that statement at all. I probably was late getting to the meeting on that day, and probably, this thing was taken up before my arrival there.

Q. I show you a letter, dated January 23rd, 1912, written by Mr. J. J. Kennedy, President, addressed to William Pelzer, Secretary of the General Film Company, appearing at page 251, Volume I, of the record. Please read that letter. You have read that letter? A. I have.

4 Q. This letter begins: "Some time before the General Film Company was organized, an estimate of the value of the business of exchanges leasing licensed motion pictures, was made by men familiar with the manufacture of motion pictures, and also with the business of exchanges." Does this letter refresh your recollection in any manner as to such an original estimate having been made? A. No, sir.

Q. The letter continues: "According to this estimate, the value of said business was \$3,468,847." The figure which I have just read as being the figure of the original

estimate tallies with the figure stated in the minutes of the meeting of October 11th, 1910, which you read, as being the amount of total payments authorized for all exchanges in entire country. Is that not correct? A. I don't see the same figures appearing in the letter as in the minutes.

Q. What is the figure in the letter? A. \$3,468,847.

Q. And what is the figure given in the minutes, that is, the total of the cash and also the preferred stock, the figure being given as authorized to be paid for all the exchanges? A. \$988,800, stock; and \$2,480,000, cash.

Q. Making how much? A. Making \$3,468,800.

Q. And there is a difference between those two figures of how much? A. Forty-seven dollars.

Q. Has the comparison of those figures refreshed your recollection as to there having been such an original estimate made? A. No, sir.

Q. Does the comparison of those figures refresh your recollection as to the authorization having been given by the General Film Company to commence buying exchanges, said authorization authorizing this amount to be paid for the exchanges? A. Such authorization was not given in my presence, and I have no recollection of it having been given.

Q. Mr. Berst, you know Mr. Harry N. Marvin? A. Yes, sir. He is the President of the Motion Picture Patents Company.

Q. Was he one of the early directors of the General Film Company? A. No, sir.

Q. Mr. Marvin testified at page 250 of the record, folio 3, that an estimate was made of the probable value of the film in the possession of the various rental exchanges throughout the country. This was before the General Film Company was formed. He also testified, page 253, folio 1, that it was his impression that this estimate of the value of film that the different exchanges had on hand was somewhere around three million dollars. Have you any recollection of that estimate, or, of having discussed with Mr. Marvin such an estimate? A. No, sir, I never discussed that with him.

Q. Do you recall testifying within the last year on behalf of the complainant in the suit of the Greater New York Film Rental Company, against the Biograph Com-

1 pany, and the General Film Company, brought in the District Court in this District? A. Yes, sir.

Q. I show you page 1257 of your testimony in that case, and ask you to read it for the purpose of refreshing your recollection. Were those questions addressed to you by the Master in that suit while you were on the stand?

Mr. KINGSLEY: I object to the form of the question, unless the questions in the record which has just been shown to the witness are asked him in proper form—

2 Mr. CALDWELL: And, unless the questions, themselves, are repeated, so that the Examiner here may take it down. Mr. Berst, you need not answer that question until the Examiner repeats to you here, the questions so that it may appear on the record what the questions are.

Mr. GROSVENOR: I was going to put those in next. I am asking him whether these questions were addressed to him and whether he made the answers, thereto.

3 Mr. KINGSLEY: He has testified he gave evidence at that hearing. I object to any omnibus statement on his part that the questions are on a certain page, and that the answers are on a certain page, or, that the questions on a certain page were asked him, or that the answers on that page were made by him, and I insist that the questions and the answers be read to him.

4 Mr. GROSVENOR: I will read them to him: "By the Master" (this is at page 1257): "Q. At the time of the meeting of the Board of Directors of the General Film Company, which was held on October 11th, 1910, at which the figures about which you have been testifying were presented, which appear in the minutes, which are in evidence, was it the plan of the General Film Company to acquire all of the exchanges in the entire country; the amounts that would be required to obtain all of such exchanges being referred to in the figures presented at that meeting? Do you understand that, Mr. Berst? A. I do understand it, Mr. Master. A certain amount was fixed, in order to be fair to all of the exchanges

in existence, in the country. If they wanted to come and offer their business for sale that figure and amount was available. Q. You were prepared to acquire them all on fair terms, is that the point? A. If they were to come to us, and a great number of them did. Q. We are not talking about, now, whether you wanted to buy, or whether they came to you to sell; we are talking about whether it was the plan to get them. A. It was not the plan to get them; it was the plan to be prepared in case they wanted to come. Q. That is, your plan was to be ready to have the necessary funds to purchase them all, if they were willing to sell, or if they wanted to sell? A. If they wanted to sell, yes." Now, do you recall giving those answers?

The Witness: Yes, sir.

By Mr. GROSVENOR:

Q. And those questions were asked of you by the Master, in that suit? A. Yes, sir.

Q. Now, what estimate, or figures were you referring to there as having been prepared in case the exchanges wanted to come to you to sell?

Mr. KINGSLEY: I object to the question, because it does not appear from the foregoing questions and answers that the witness referred to any definite sum, or any definite estimate.

By Mr. GROSVENOR:

Q. Let me get at it differently. In your first answer, you state: "A certain amount was fixed in order to be fair to all the exchanges in the country. If they wanted to come and offer their business for sale that figure and amount was available." And then, later on, you say: "It was not the plan to get them; it was the plan to be prepared in case they wanted to come." Now, to what figures are you referring there? A. I was explaining at the time, the minutes of October 11th, 1910, which appear in the record, and I was giving my opinion as to what Mr. Kennedy may have had in mind at the time.

1 Q. And what was it, in your opinion, that Mr. Kennedy had in mind at the time? A. The figures and statement speaks for itself.

Q. That is, you think Mr. Kennedy made up an estimate as to what should be paid for each of the several exchanges, so as to be ready in case the exchanges came to sell out? A. That is the way the statement reads.

Q. Is that what you meant? A. That is what I meant, to explain what Mr. Kennedy had in mind when he put that statement in the minutes.

2 Q. Are you able to testify whether or not a statement was made out by Mr. Kennedy, or any other officer of the General Film Company, showing what would be a fair amount to pay to each of the rental exchanges, in case the rental exchanges wanted to sell out? A. There is no other statement, to my knowledge, than the one which was made by Mr. Kennedy, and which I never heard of before this Greater New York suit in which I have testified. I never heard of that statement, or those figures, before. They were shown to me, first, by the counsel of the Greater New York Company, that is the first time I ever heard of them. I
3 don't remember, for sure, if I was present at the time they were read, if they were read at that meeting. I presume I was.

Q. You did not read this record of the petitioner in this suit, in which you are now testifying, in which those minutes and figures were introduced long before they appeared in this Greater New York case? A. I don't remember if I had read it. I don't think I had read it all. I just glanced at it.

4 Q. On page 1774, folio 4, you state the contents of a letter against the objection of counsel for the Government, received by you from the Armat Company. Have you made any effort to find that letter? A. I have not been requested to do it, and I have not made any effort to find it.

Q. Will you please look through your files, and produce that letter for the purpose of cross examination? A. If I have it I will produce it.

MR. CALDWELL: Now, I insist that counsel for the petitioner has no right to request a witness, when he

is cross examining him, to produce a document at a future hearing for further cross examination. 1

Mr. GROSVENOR: I think that counsel for defendants is very arbitrary and unreasonable in making that statement, his own direct examination of this witness, by consent of the Government's counsel, having been adjourned for two days, that is to say, he conducted part of his direct examination, and then, we being willing, adjourned it for two days, and this man appears for the first time to-day to be cross examined. I am not asking nearly as much as you asked. 2

Mr. CALDWELL: Petitioner's counsel knows very well that, under the rules of practice, if he wanted that letter produced he should have given us notice to produce it, and he cannot hold this cross examination in abeyance and adjourn it in order to obtain the production of a document which he has not notified us to produce.

By Mr. GROSVENOR:

Q. Now, witness, on page 1775, there is a reference to letters which you testified you sent to your company in France, and again you state the purport of that correspondence against the objection of counsel for the Government. Will you please produce copies of those letters? 3

Mr. CALDWELL: I make the same statement with respect to that request, and the same objection that I did in reference to the previous request.

The Witness: I will produce the letters if I have them. It will take some time to search for them because they are in French, and I will have to get somebody who knows French, to find them, and probably there is a mass of correspondence to go through, covering several years. 4

By Mr. GROSVENOR:

Q. Before testifying as to the contents of those letters you had made no search in order to refresh your recollection as to what the exact contents of the letters were? A. No. These letters were written by the Pathe Cinemato-

1 graph Company, which is no longer in existence, and I doubt if I have those letters. I may have them, though, and I will look for them.

Q. On page 1776, you again state the purport of letters, which you alleged in your testimony were sent by you to your home company. Will you please produce copies of all those letters?

Mr. CALDWELL: I make the same objection, and statement on the record with respect to that request.

2 The Witness: Which letters?

Mr. GROSVENOR: If you will consult with your counsel, as I have given the places in the record where the letters have been referred to, and also refer to the record, I think you will understand what is required.

Q. And also, on page 1776, you refer to another letter which you say you received from the Armat Company. I wish you would make an effort to obtain that letter? A.
3 Yes, sir.

Mr. GROSVENOR: I also suggest to counsel for defendants that if they will read the record at pages 1774 and 1775, they will observe that I made objection to the testimony as soon as the witness stated the purport of it, and stated: "Let him produce the letters," which seems to me to be sufficient notice.

4 By Mr. GROSVENOR:

Q. Mr. Berst, I forgot to ask you about certain of your testimony on direct examination where you testified that suits were brought against Lubin and Selig, by Edison. When were those suits brought, do you know? A. I think they were brought either in the last part of 1906, or in the early part of 1907.

Q. Were they on the camera and film reissues? A. They were on the camera patent.

Q. And not on the film reissues? A. I could not testify
as to that. 1

Q. You don't know? A. I don't know.

Mr. CALDWELL: I wish to make it clear that counsel for the defendants for the present, at least, stand on their rights, which they have already presented on the record, that they are under no duty or obligation to produce this witness for further cross examination. They may hereafter conclude to waive their rights in this respect, and if they do they will produce him. 2

Mr. GROSVENOR: I request counsel for the defendants to produce the letters called for at the next hearing, or, in lieu thereof, Mr. Berst, to explain where the letters are, if they cannot be found.

SAMUEL LONG, thereupon resumed the stand.

Cross examination continued by Mr. GROSVENOR:

Q. Mr. Long, you testified yesterday that the Edison Company had some kind of a notice on the film boxes containing their films, during 1907 and 1908. Do you recall your testimony to that effect? A. Yes, that question was asked yesterday. 3

Q. Prior to the formation of the Patents Company and the issuing of licenses thereunder in December, 1908, did any company other than the Edison Company place any such notice on film boxes? A. That period of time would be near to the operation of the licenses given by the Edison Company, if I understand your question?

Q. Well, I will change the question. Prior to the formation of the so-called Edison licensees' agreements, did any manufacturer other than the Edison Company place upon the boxes which contained the films, the reels, any notice to the effect that the films were patented? A. I don't recall any. The Biograph label had no notice of patents. 4

Mr. KINGSLEY: What was that answer?

1 The Witness: I don't recall that the Biograph labels contained the notice of patents.

By Mr. GROSVENOR:

Q. When you began to manufacture in 1907, in the early part of that year, did you place any such notice on the boxes containing your films? A. We did not.

2 Q. At another point in your direct examination, this question is addressed to you by Mr. Caldwell, page 1910: "Q. At the time of the organization of the General Film Company, was it your idea that the General Film Company would acquire all of the then existing licensed exchanges? A. No, it was not my personal idea. This plan had been proposed, and as I said, I was timid about it." You say "No, it was not my personal idea." Why did you use the word "personal?"

Mr. KINGSLEY: I suggest that the entire text be read to the witness in connection with that question.

Mr. GROSVENOR: I read his entire answer.

3 Mr. KINGSLEY: There is an explanatory clause on page 1910, which ought to be read to the witness.

Mr. GROSVENOR: Well, I will read the next question if you think there is any doubt.

"Q. And by this plan, you mean the plan to acquire them all?

"Mr. GROSVENOR: I object to that as leading.

"A. No, the plan of the organization of a company to do a rental business."

By Mr. GROSVENOR:

4 Q. In giving that answer, "No, it was not my personal idea"—what do you mean by using the word "personal"? A. I was referring to my own opinion without any reference to the company or anyone else.

Q. Was it the idea of others in the company that the General Company would acquire all the then existing licensed exchanges? A. I don't know, but I don't believe it was.

Q. This question was addressed to you on page 1923, and not answered. Either the answer was not given, or it

was owing to the objection, or else it was omitted by the stenographer. This is in your cross examination: 1

“Q. And you think the fact that these manufacturers through the Patents Company were cancelling some of the licenses in that period had no effect upon inducing other rental exchanges to sell out to the General Film Company?” Do you recall that question? A. I cannot say that I recall the precise question.

Q. Take the record, and read from page 1923 on. A. There were several questions along that same line.

Mr. KINGSLEY: I understood, Mr. Grosvenor, that the question was not pressed because it was objected to on the ground that it contained a mis-statement of facts, you having assumed that the manufacturers were cancelling the licenses through the Patents Company. 2

The Witness: Which is the question I did not answer?

Mr. GROSVENOR: “Q. And you think the fact that these manufacturers through the Patents Company were cancelling some of the licenses in that period, had no effect upon inducing other rental exchanges to sell out to the General Film Company?” 3

Mr. KINGSLEY: I object to the question on the ground that it assumes a fact to which the witness has not testified.

The Witness: The manufacturers were not cancelling licenses. As licensees of the Patents Company, they made recommendations which the Patents Company either followed or did not follow. It was their prerogative to cancel licenses, and not the manufacturers'. Your question is, did these manufacturers in cancelling licenses, have any effect upon the exchanges? As a matter of fact, they were not cancelling licenses, and their recommendation to the Patents Company, I do not believe, had any effect upon the exchanges in regard to the sale that they might make of their exchanges. They had the protection of the Patents Company. 4

1 By Mr. GROSVENOR:

Q. The Patents Company was cancelling licenses during that period, wasn't it? A. It was.

Q. And do you think the fact that the Patents Company was cancelling the licenses of rental exchanges during that period had any effect in inducing other rental exchanges to be willing to sell out?

Mr. CALDWELL: That is objected to, on the ground that it calls for the opinion of the witness.

2 Mr. GROSVENOR: This is all proper cross examination, the witness having testified on his direct that these exchanges all sold out voluntarily, and came running to the General Film Company to buy them.

Mr. CALDWELL: I still stand on the objection.

3 The Witness: I do not believe the cancellations affected the exchanges, or could have given them any scare, if that is what you are endeavoring to bring out, or made them sell by coercion. That I do not think. Each case of cancellation when it was brought to the attention of the licensees was considered on its merits. While, as you brought out, the same persons made recommendations of cancellation, those same persons, or approximately the same persons, were interested in the General Film Company, they were in a position where they had to give some decision when called upon by the Patents Company. I believe they made their recommendation purely on its merits, and not with any belief that it would effect any scare among exchanges or stampede or whatever you might term it, to bring them to a point to sell their exchange.

4 By Mr. GROSVENOR:

Q. Let us get at it in another way. These meetings of the licensed manufacturers, considered, as I understand your testimony, the subject of the cancellation of licenses of rental exchanges in a judicial manner? A. Yes, sir.

Q. That is to say, you sat as one of ten judges on a question of whether you would cancel this or that rental exchange for alleged violation?

Mr. KINGSLEY: I object to that as not a proper statement of what the witness has testified to. 1

Mr. CALDWELL: I object to that further, on the ground that it attempts to characterize the actions of the manufacturers as judicial.

The Witness: We were licensees of the Patents Company, and our license could be cancelled if we violated it.

By Mr. GROSVENOR:

Q. You sat there, the ten manufacturers, considering the case of each rental exchange as it came up, and endeavored to decide it on the merits, that is, upon the testimony presented; and then, to recommend to the Patents Company, the cancellation, or not, of the license, isn't that what you did? A. Well, our recommendation was based upon what we had before us to consider, and we decided it on the merits, fairly and honestly, and what we believed was the right thing to do in each case. 2

Q. That is, you sat as a judge, didn't you? A. No, I didn't feel that I was a judge. If you want to characterize each of us as a judge, for my own part, I can state sincerely, that, in arriving at an opinion, which I expressed, that I did it just with the sincerity that you are asking these questions, now, or that the honorable Judges who are going to pass upon my testimony, will consider it. 3

Q. Now, witness, you then sat in one meeting deciding upon whether or not you would cancel an exchange license for cause, that is, at a meeting of the licensed manufacturers?

Mr. KINGSLEY: I object to that as not a proper characterization of what the witness stated he did at manufacturers' meetings, the witness having testified that the manufacturers sometimes recommended to the Patents Company, a cancellation, and he also testified that the manufacturers did not themselves cancel licenses. 4

Mr. CALDWELL: And further, that the Patents Company was not bound to follow the recommendation.

Mr. GROSVENOR: Read that question again.

1 The Examiner repeats the question as follows:

“Q. Now, witness, you then sat in one meeting deciding upon whether or not you would cancel an exchange license for cause, that is, at a meeting of the licensed manufacturers?”

The Witness: Yes, it was in the meetings of the licensees of the Patents Company that the reports of violations and abuses were brought up, and were presented to the licensees for their recommendation.

2 By Mr. GROSVENOR:

Q. And at the same time, the General Film Company, of which you were a Director, was engaged in this plan of buying a number of rental exchanges?

Mr. CALDWELL: That is objected to on the ground that the witness has stated that he knew of no plan.

The Witness: What period does that cover?

By Mr. GROSVENOR:

3 Q. Well, during the year 1910, the General Film Company bought something like 57 exchanges, didn't it? A. They bought, during that year, yes.

Q. Well, then, there was some sort of a plan to acquire at least 57 exchanges, wasn't there?

Mr. CALDWELL: Objected to on the ground that the witness has been repeatedly interrogated on that subject, and has stated that there was no plan for purchase.

4 The Witness: The General Film Company was then buying exchanges that were offered.

By Mr. GROSVENOR:

Q. Do you think that you could be a fair and impartial judge on the question of the cancellation of the license of a rental exchange when, at the same time, you and the others sitting as judges with you, were Directors and constituted the entire Board of Directors of the General Film Company, the company which was buying these rental

exchanges? A. In passing upon that, or, rather, in making a recommendation of cancellation, that was one thing, and the purchase of an exchange was another, and it was not the same persons that negotiated the purchase of an exchange. I negotiated for no exchange and passed upon no offers that were made. 1

Q. Kennedy did, didn't he? A. He evidently did. He negotiated the purchase.

Mr. GROSVENOR: Read the question, Mr. Examiner, and see if he can answer it yes or no. 2

The Examiner repeats the question as follows:

"Q. Do you think that you could be a fair and impartial judge on the question of the cancellation of the license of a rental exchange, when, at the same time, you and the others sitting as judges with you, were Directors and constituted the entire Board of Directors of the General Film Company, the company which was buying these rental exchanges?"

Mr. KINGSLEY: Now, read the answer. 3

The Examiner repeats the answer as follows:

"A. In passing upon that, or, rather, in making a recommendation of cancellation, that was one thing, and the purchase of an exchange was another, and it was not the same persons that negotiated the purchase of an exchange. I negotiated for no exchanges and passed upon no offers that were made."

The Witness: I don't understand your question.

By Mr. GROSVENOR: 4

Q. Do you think that you could be a fair and impartial judge under those circumstances? A. I feel I could.

Q. And you think J. J. Kennedy could be also? A. Well, I am not testifying for Mr. Kennedy.

Mr. CALDWELL: The question is objected to.

Mr. KINGSLEY: I move to strike out the question and answer on the ground that the question is

1 grossly improper, and calls upon the witness to characterize the conduct of another.

Mr. GROSVENOR: It is perfectly proper cross examination, the witness having testified on direct that these exchanges all came running to get under the shelter of the General Film Company, the cross examination being for the purpose of showing the actual facts and what had great influence in animating these rental exchanges.

2 Mr. KINGSLEY: The statement of the Government's counsel is absolutely improper. There is no such statement in the evidence that the exchanges came running, that being a phrase of his own, and a characterization. There is nothing in the direct testimony wherein the witness characterizes the mental operations or the conduct of another man. He should not be called upon to make such a characterization upon the cross examination or at any time.

By Mr. GROSVENOR:

3 Q. Witness, I asked you certain questions yesterday about an authorization having been given by the Board of Directors and about an original estimate of the value of all the exchanges, and for the purpose of refreshing your recollection, I showed you the minutes and also showed you a letter from Mr. J. J. Kennedy to William Pelzer. Are you now able to add anything to the testimony you gave yesterday on that point? A. I do not know of anything now that has been in my mind since that time. If you wish to draw out anything by question, I should be pleased to answer it.

4 Q. Do you not now recall when, if ever, such an authorization was given? A. No, I do not.

Mr. CALDWELL: I offer in evidence a certified copy of a writ of injunction issued out of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, under date of November 1st, 1907, being the case of Thomas A. Edison against Selig Polyscope Company, and also certified copy of the opinion in that case. I ask that the certified copy of the writ of

injunction be printed in the record, the opinion itself having already been introduced in evidence as Defendants' Exhibit 111 and printed in the record. I offer it in evidence, having in view the fact that counsel for the petitioner has denied that there was any such decision or injunction at that time. 1

Mr. GROSVENOR: If you will read the record, I think you will find I denied that you proved any such injunction, and your production of one now is evidently an admission that you had not, and that my objection was well founded. 2

Mr. CALDWELL: However that may be, we offer that in evidence now.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 113," and the same is as follows:

Defendants' Exhibit No. 113.

INJUNCTION WRIT.

Circuit Court of the United States, }
Northern District of Illinois, } ss.:
Eastern Division, }

3

THE UNITED STATES OF AMERICA.

To Selig Polyscope Company, and to your Counselors, Attorneys, Solicitors, Trustees, Agents, Clerks, Employes, Servants and Workmen, and to each and every of you,
GREETING:

WHEREAS, It hath been represented to the Judges of our Circuit Court of the United States for the Eastern Division of the Northern District of Illinois in Chancery sitting, on the part of Thomas A. Edison, Complainant in his certain bill of complaint, exhibited in our said Circuit Court, on the Chancery side thereof, before the Judges of said Court, against you, the said Selig Polyscope Company, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a 4

- 1 Writ of Preliminary Injunction issue out of said Court,
upon said bill, enjoining and restraining you, and each of
you, as prayed for in said bill; We, therefore, in considera-
tion thereof, and of the particular matters in said bill set
forth, do strictly command you, the said Selig Polyscope
Company, your Counselors, Attorneys, Solicitors, Trustees,
Agents, Clerks, Employes, Servants and Workmen, and each
and every of you that you do absolutely desist and refrain
from directly or indirectly making, using or selling any
moving-picture machine containing and embodying the im-
2 provements described in Reissue Letters Patent No. 12,037,
granted to Thomas A. Edison September 30, 1902, for a
Kinetoscope, and claimed in claims 1, 2 and 3 thereof, and
particularly from making, using or selling any moving-pic-
ture machines, by whatever name designated, containing and
embodying the constructions shown and described in Letters
Patent of the United States, No. 712,462, issued October 28,
1902, to William N. Selig, for Improvements in Machines
for Exhibiting and Taking Pictures, or in Letters Patent
of the United States No. 579,882, issued March 30, 1897, to
A. and L. Lumiere, for a Kinetoscope, until this Honorable
3 Court, in Chancery sitting, shall make other order to the
contrary. Hereof fail not, under the penalty of what the
law directs.

To the Marshal of the Northern District of Illinois, to
execute, and return in due form of law.

Witness, the HON. MELVILLE W. FULLER, Chief
Justice of the United States of America, at
Chicago, in said District, this first day of No-
[SEAL.] vember, in the year of our Lord one thousand
nine hundred and seven, and of our Independence
the one hundred and thirty second.

4

H. S. STODDARD,
Clerk.

MARSHAL'S RETURN:

I have served this writ within my District in the following
manner, to-wit: Upon the within named Selig Polyscope
Company by reading the same to and in the presence and
hearing of William N. Selig, President of the said Company,

at the same time delivering to him a true copy thereof on 1
the 4th day of November A. D. 1907 .

LUMAN T. HOY,
U. S. Marshall,
By Wm. E. Cass,
Deputy.

(ENDORSED) Filed Nov. 7, 1907. H. S. Stoddard, Clerk.

United States of America, }
Northern District of Illinois, } ss.:
Eastern Division, }

2

I, T. C. MACMILLAN, Clerk of the District Court of
the United States for the Northern District of Illinois, do
hereby certify the above and foregoing to be true and com-
plete copies of certain documents filed in the Circuit Court
of the United States for the Northern District of Illinois in
case No. 26,512, Thomas A. Edison v. Selig Polyscope Com-
pany, as follows towit:

Opinion of Judge Kohlsaatt filed Jan. 29, 1910, as
of Oct. 24, 1907, and
Injunction Writ filed Nov. 7, 1907,

3

as the same appear from the originals thereof now remain-
ing in my custody and control.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and and affixed the seal of said
[SEAL.] Court at my office in Chicago, in said District,
this fifth day of September A. D. 1913.

T. C. MACMILLAN,
Clerk.

By John H. R. Jamar,
Deputy Clerk.

4

Mr. CALDWELL: Now, the understanding is that
we adjourn until December 1st.

The Examiner: By agreement of counsel?

Mr. GROSVENOR: I want to put on the record that
I consent to this adjournment to that date, my un-

1 derstanding being, after conference with the attorneys for the defendants, that they will proceed on that day and endeavor to proceed continuously up through December 13th in New York, unless they are able to conclude their New York testimony prior to that date.

 Mr. CALDWELL: That is quite right, I think, as far as it goes, but there is no understanding that we will not take any further testimony in New York after that date. You understand that, don't you?

2 Mr. GROSVENOR: Yes, I understand that, but you will—

 Mr. CALDWELL: We will endeavor to proceed continuously up to December 13th.

 Mr. GROSVENOR: And that then, probably, the defendants will, in all probability, conclude their testimony in New York, so far as it has to be taken in New York, by that time.

3 Mr. CALDWELL: I would not like to say we will do that in all probability. I will say that we will use our best endeavors to substantially complete our testimony in New York by that time. We may, however, be disappointed in our belief.

 Mr. GROSVENOR: In mentioning the date of December 13, no inference must be drawn from the naming of the date, the 13th, that the Government's counsel will consent to an adjournment at that time if the taking of testimony by the defendants at that time is not concluded.

4 The Examiner: I understand the agreement is, that the defendants agree to go on continuously from December 1st to December 13th, and do all the work they can here.

 Mr. CALDWELL: The defendants agree to use their best endeavors.

 The Examiner: The hearings are, therefore, adjourned until 10:30 o'clock A. M., December 1, 1913.

Whereupon, at 3:30 P. M. on this Friday, the 21st day of November, 1913, the hearings are adjourned until Monday, December 1st, 1913, at 10:30 A. M., at the Hotel Manhattan, Room 159, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner, <i>v.</i> MOTION PICTURE PATENTS Co. and others, Defendants.</p>	}	<p>No. 889. Sept. Sess., 1912.</p>
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2

NEW YORK, December 1, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., December 1, 1913, at Room 159, Hotel Manhattan, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Defendants' Exhibit No. 113, being certified copy of Writ of Injunction, dated 1st November, 1907,

1 against Selig Polyscope Company *et al.*, issued out of the Circuit Court of the United States for Northern District of Illinois, Eastern Division, was returned to Mr. George F. Scull.

Thereupon JAMES STUART BLACKTON, previously sworn, resumed the stand.

Direct examination continued by Mr. KINGSLEY :

2 Q. Mr. Blackton, I show you a paper endorsed "United States Circuit Court, Southern District of New York, in Equity. On Patent No. 589,168," and entitled "Thomas A. Edison vs. American Vitagraph Company, and Walter Arthur, individually, and as General Manager of said Company," and ask you if you recognize it? A. I do.

Q. Was this paper served upon the American Vitagraph Company? A. Yes.

Q. Was it served upon you individually? A. Yes.

M. KINGSLEY : I offer it in evidence.

3 Mr. GROSVENOR : I enter objection to the introduction of this paper on the ground that it is immaterial, and furthermore, too remote in time, the date of the paper being September 18th, 1900, that is eight years prior to the formation of the combination complained of in this suit, and on the ground that it is an injunction issued under Patent No. 589,186, which was held invalid subsequently, and abandoned more than five or six years prior to the formation of the combination alleged to be unlawful in this case.

4 The paper offered is received in evidence and marked by the Examiner "Defendants' Exhibit No. 114," and is as follows :

Defendants' Exhibit No. 114.

1

UNITED STATES OF AMERICA.

' CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

2

THE PRESIDENT OF THE UNITED STATES OF
AMERICA,

To AMERICAN VITAGRAPH COMPANY and WALTER
ARTHUR, individually and as General Manager
of said Company, and their and each of their serv-
[SEAL.] ants, agents, attorneys, employees, workmen and
confederates, and each and every of them,
GREETING:

3

WHEREAS, it hath lately been represented to us in our
said Circuit Court of the United States for the Southern Dis-
trict of New York, sitting as a Court of Equity, on the part
of THOMAS A. EDISON, complainant, that he, the said
complainant, hath lately exhibited a bill of complaint against
you, the said AMERICAN VITAGRAPH COMPANY and
WALTER ARTHUR, individually and as General Manager
as aforesaid, defendants, to be relieved touching the matters
therein contained, in which bill it is, among other things, set
forth that Letters Patent were granted and issued by the
United States to him, said Thomas A. Edison, for a new and
useful invention in Kinetographic Cameras, which said Let-
ters Patent were numbered 589,168, and were dated the 31st
day of August, 1897, and that he, said Thomas A. Edison,
complainant, has since said date been, and now is, proprietor
of said Letters Patent;

4

And it being also set forth in said bill that you, the said
defendants, have made, used, and vended to others to be used
and sold, and that you are now making, using, and vending
to others to be used and sold, apparatus containing, embody-
ing and employing the above mentioned invention or sub-

1 stantial and material parts thereof and which are an infringement upon said Letters Patent No. 589,168, and that your actings and doings are contrary to equity and good conscience;

2 WE, THEREFORE, in consideration of the premises and the same appearing to us to be true, do strictly and fully command and enjoin you, the said AMERICAN VITAGRAPH COMPANY and WALTER ARTHUR, individually and as General Manager as aforesaid, and your servants, agents, attorneys, employees, workmen and confederates, and
 3 each and every of you, under the penalties that may fall thereon, that you do henceforth altogether, absolutely and entirely desist and refrain from directly or indirectly making, constructing, using, vending, delivering, working, or putting into operation or use, or in anywise counterfeiting or imitating the said invention, or any kinetographic cameras or apparatus for making photographs of moving objects or supplies therefor, or photographic films made or operated in accordance therewith or like or similar to those which you, said defendants, have heretofore made, sold, constructed, operated or used in infringement of said Letters Patent No.
 3 589,168, and from in any way further infringing said Letters Patent or the rights of the complainant under the same.

WITNESS the Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the City of New York, in said District, this 18th day of September, one thousand nine hundred.

JOHN A. SHIELDS,

Clerk of the U. S. Circuit Court

for the Southern District of New York.

Dyer, Edmonds & Dyer,

Solicitors for Complainant.

4 S. O. Edmonds,

Of Counsel for Complainant.

By Mr. KINGSLEY:

Q. Mr. Blackton, after the injunction of September 18th, 1900, which is in evidence marked as "Defendants' Exhibit No. 114," what arrangement did you make with the Edison Manufacturing Company with respect to producing motion pictures? A. We arranged with the Edison Manufacturing

Company that we might continue to manufacture negatives, but said negatives were to be turned over to them, and printed and sold by them, and they were to allow us a certain royalty per foot, I forget the amount now, on each foot that they sold. 1

Q. Were you at that time absolutely prevented from making and independently selling motion pictures without referring the matter to the Edison Manufacturing Company?

A. Absolutely.

Q. I show you a paper, dated Orange, New Jersey, October 31st, 1900, which purports to be a credit memorandum issued by the Edison Manufacturing Company, to Blackton & Smith, 116 Nassau Street, New York, and ask you if you recognize it? A. I do. 2

Q. What does that credit memorandum represent, Mr. Blackton? A. It represents the royalty they paid us on a number of films of the Galveston Disaster, the negatives of which we made and turned over to them under our agreement.

Q. Does that bill represent the course of business then prevailing between Blackton & Smith and the Edison Manufacturing Company with reference to the production of motion pictures? A. It refers to all of our dealings with them at that time, that is, all of our dealings with them were done in that way. 3

Mr. GROSVENOR: I think in answering he should indicate the time, that is, the duration of this arrangement.

The Witness: Well, I can add to that by saying from the year 1900 to possibly 1902.

Mr. GROSVENOR: I object to all this testimony as being too remote, and having no bearing upon any of the issues in this case, the same relating to relations between the Edison and Vitagraph Companies in 1902, six years before the formation of this alleged combination. 4

Mr. KINGSLEY: I offer the credit memorandum in evidence.

Mr. GROSVENOR: And I make the same objection to the introduction of this paper.

- 1 The paper offered is received in evidence and marked by the Examiner "Defendants' Exhibit No. 115," and is as follows:

Defendants' Exhibit No. 115.

Billhead.

Orange, N. J., Oct. 31, 1900.

Blackton & Smith,
2 116 Nassau St., N. Y. C.

EDISON MANUFACTURING COMPANY, Dr.

Credit Memorandum.

By allowance of 30c. per 50 feet on the following Galveston Films sold to date:

	30	Pano. of East Galveston, 100 ft. ea.	3000 ft.	
	35	Searching ruins on B'way, 50 ft. ea.	1750 "	
	27	Pano. of Wreckage on Water Front, 50' ft. ea.	1350 "	
3	24	" " Galveston Power House, 50' ea.	1200 "	
	23	" " Orphans' Home, Galveston, 50' ea.	1150 "	
	17	" " Tremont Hotel, Galveston, 50' ea.	850 "	
	20	Launching a stranded schooner, 75' ea.	1500 "	
	18	Birds-eye Pano. of Dock Fronts, 75' ea.	1350 "	
			<hr/> 12150 "	
		12150 ft. at 30c. per 50 ft.		72 90

RETURNED FILMS.

4	1	Pano. of Galveston Power House,	50 ft.	
	1	" " Orphans Home, Galveston,	50 "	
	1	" " Wreckage on Water Front,	50 "	
	1	" " East Galveston,	100 "	
			<hr/> 250 "	
		250 ft. at 30c. per 50 ft.		1 50
				<hr/> 71 40

By Mr. KINGSLEY :

1

Q. I show you a copy of a letter on the letterhead of The American Vitagraph Company, dated New York, January 12th, 1901, and addressed to Mr. W. E. Gilmore, Edison Manufacturing Company, Orange, N. J. Do you recognize this copy? A. Yes, sir.

Q. What is that letter, Mr. Blackton, a copy of what? A. It is a copy of a letter I wrote to Mr. Gilmore after my firm was notified that the agreement which I spoke of just previously about paying royalty to us and using our negatives had been, without any notice to us, cancelled by the Edison Company.

2

Q. Was this letter one you wrote in the way of a protest, or asking for information regarding the act of the Edison Manufacturing Company? A. The letter itself is a protest throughout.

Mr. KINGSLEY : I offer it in evidence.

Mr. GROSVENOR : I make the same objections, and move to strike out all the answers of the witness relating to this subject, the date of this letter January 12th, 1901, showing that it relates to matters entirely too remote to have any bearing upon any of the issues in this case.

3

The paper offered is received in evidence and marked "Defendants' Exhibit No. 116," and is as follows :

Defendants' Exhibit No. 116.

Letterhead of

THE AMERICAN VITAGRAPH COMPANY.

4

New York, Jan. 12th, 1901.

Mr. W. E. Gilmore,
Edison Mfg. Co.,
Orange, N. J.

Dear Sir :—

We are in receipt of a communication from Dyer, Edmonds and Dyer, notifying us that our contract with the Edison Co., dated Oct. 9th, 1900, is cancelled. As we had

1 received no intimation of such a proceeding on your part we were surprised at the notification, in view of the fact that there had been no dissatisfaction expressed in regard to our fulfillment of the contract, nor any other disagreement with the possible exception of our inability to pay the ten per cent. royalty claimed by the Edison Co.

We however, went over this matter with Mr. White and, after submitting a statement of our business for two months showing amount taken in and amount of running expenses we demonstrated that we could not possibly pay ten per cent. of our gross receipts, and still remain in business, as we are
 2 under extremely heavy expense in maintaining our present premises until the expiration of our lease on June 1st, 1901. At the time of our conversation with Mr. White we understood that he was to confer with the Edison Co. and in submitting our case for their consideration, was instructed to state that we were quite willing to pay a reasonable royalty on our business, and we have been daily expecting an answer. We are willing to submit our books for examination and prove our assertion that it is impossible for us, in our present situation, to pay the amount required.

3 After careful figuring we now submit the following propositions for your consideration:—

We will agree to pay to the Edison Company, at the expiration of each week, the sum of five per cent. of the gross amount we receive for our exhibitions.

Or,

4 Having on hand between three and four thousand feet of Foreign films, and being compelled to purchase from time to time other new Imported subjects, we are willing to pay the sum of Five Dollars (\$5.00) per one hundred foot strip as royalty on all Foreign films in our possession and on all new subjects purchased.

As you may be aware we buy all the new films manufactured by the Edison Co. but we cannot possibly fill our engagements with none but Edison films, and successfully compete with other exhibitors using Foreign and American films of all makes, until the output of new Edison subjects is much greater than at present.

We understand from Mr. Edmonds that it is against the policy of the Edison Co. to commit themselves in writing regarding the licensing of Foreign films in this country but

so far as we are concerned we are quite willing to pay the
above mentioned royalties without any written contract. 1

We trust you will realize that we are willing to comply
with your demands in so far as lies in our power and we will
call on you early next week, at Orange if convenient and fur-
ther explain our propositions outlined in this communica-
tion.

Yours very truly,

Dict. JSB/MB

2

By Mr. KINGSLEY :

Q. Mr. Blackton, you spoke of the Edison Manufac-
turing Company having paid royalty to Messrs. Blackton
& Smith. When you used the word "royalty," did you
mean that you had patents upon which they were paying
you royalty, or that this was a certain allowance they paid
you for negatives which you produced and turned over to
them?

Mr. GROSVENOR: This question, I take it, refers to 3
this same period, 1900 and 1902?

Mr. KINGSLEY: Yes.

Mr. GROSVENOR: It is objected to on the grounds
that I have heretofore stated.

The Witness: The moneys they paid us were in the shape
of bonuses or payments for our work in making the nega-
tives—they were not patent royalties.

By Mr. KINGSLEY :

4

Q. After the termination of the agreement between
Blackton & Smith, and the Edison Manufacturing Com-
pany, did Blackton & Smith, or the American Vitagraph
Company, have any litigation with the Edison Manufac-
turing Company? A. Yes.

Q. And was this litigation going on in 1905? A. Yes.

Q. Was it going on in 1906? A. Yes.

Q. Was it going on in 1907? A. Yes.

Q. I show you a paper dated March 24th, 1905, signed

1 by Kerr, Page & Cooper, and ask you if you recognize it?
A. Yes.

Q. What is that paper, Mr. Blackton? A. It is a receipt for four hundred dollars, paid by the Vitagraph Company to Kerr, Page & Cooper, as a retainer in the suit brought against us by Thomas A. Edison, under reissued Patents No. 12,037 and No. 12,192, a similar suit having been brought at the same time against Messrs Paley & Steiner, Gaston Melies, J. A. Berst and Eberhardt Schneider.

2 Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I object to it on the grounds heretofore stated, and move to strike out the several answers of this witness relating to this suit on the same grounds; and, on the further ground, that the document is incompetent and irrelevant.

The paper offered is received in evidence and marked by the Examiner "Defendants' Exhibit No. 117," and is as follows:

Defendants' Exhibit No. 117.

3

Letterhead of

KERR, PAGE & COOPER.

New York City, March 24th, 1905.

Received from The Vitagraph Company of America the sum of Four Hundred Dollars (\$400) as retainer for the defense of two suits brought by Thomas A. Edison for infringement of U. S. reissued patents Nos. 12,037 and 12,192, it being understood that we undertake the defense of these suits on the same terms as those already made with Messrs. Paley & Steiner, Gaston Melies, J. A. Berst and Eberhardt Schneider, for the defense of the several suits brought against them by the said Edison.

4

KERR, PAGE & COOPER.

By Mr. KINGSLEY:

Q. I show you a paper dated March 15, 1907, signed "S. O. Edmonds," and ask you if you recognize it? A. I do.

Q. What is that paper, Mr. Blackton? A. It is a receipt for a two hundred dollar payment or retainer to Mr.

S. O. Edmonds, in the suit brought by the Edison Company against the Pathe Company, George Melies, and the Vitagraph Company of America. 1

Q. Do you know upon what patent that suit was brought? A. On the reissued Edison Camera patent.

Mr. KINGSLEY: I offer it in evidence.

By Mr. KINGSLEY:

Q. Mr. Blackton, was the suit already brought, or were you providing against an anticipated suit? Are you quite sure about your answer there? I notice the letter speaks about an anticipated suit. A. I am not quite sure. There were several suits brought between 1904 and 1907, and I am not sure whether this relates to a suit already brought, or which particular suit it relates to. 2

Mr. GROSVENOR: It is objected to on the grounds heretofore stated.

The paper offered is received in evidence and marked by the Examiner "Defendants' Exhibit No. 118," and is as follows: 3

Defendants' Exhibit No. 118.

Letterhead of

SAMUEL OWEN EDMONDS.

New York, March 15, 1907.

Vitagraph Company of America,
116 Nassau Street,
Manhattan.

Gentlemen:— 4

I beg to acknowledge receipt of yours of 12th instant, enclosing check \$200. in payment of retainer in anticipated suit by Edison Kinetograph Company against the Pathé Company, George Melies or the Vitagraph Company of America.

I shall be glad to take this matter up with you tomorrow morning at ten o'clock, in accordance with your suggestion. I have just returned to the city, however, and there

1 will not be time between now and then for me to make any
substantial progress in the investigation which I expect to
make into the situation in which you are interested.

Yours very truly,

S. O. EDMONDS.

By Mr. KINGSLEY:

2 Q. I show you a paper, dated Washington, D. C., No-
vember 27th, 1902, signed Armat Moving Picture Company,
and ask you if you recognize this paper? A. I do.

Q. To whom is the letter addressed? A. It is addressed
to the American Vitagraph Company.

Q. Was it received by your company? A. It was, yes.

Mr. KINGSLEY: I offer it in evidence.

3 Mr. GROSVENOR: I object to the admission of this
paper on the ground that it is entirely too remote
to have any bearing on the issues, being dated No-
vember 27th, 1902, six years before the combination
alleged in this case to be unlawful, was formed.

The paper offered is received in evidence and
marked by the Examiner, "Defendants' Exhibit No.
119," and is as follows:

Defendants' Exhibit No. 119.

Letterhead of

ARMAT MOVING-PICTURE COMPANY.

4 Washington, D. C., Nov. 27th, 1902.

The American Vitagraph Co.,
116 Nassau St., New York, N. Y.

Dear Sirs:—

Our experts examined the motion picture machine you
are using at Chase's Theatre, this city, and it is pronounced
an infringement of our patent 586,953, recently, adjudicated
as you know, in the Southern District of New York.

This machine also infringes our patents 673,992 and
578,185.

This is to notify you that we will hold you responsible for these infringements. 1

As you have ignored our many previous protests and notices to discontinue your unlawful exhibitions, you will next hear from us in a suit for injunction damages and profits.

Yours very truly,
ARMAT MOVING PICTURE CO.

By Mr. KINGSLEY:

Q. I show you a letter dated November 29th, 1902, addressed to The American Vitagraph Company, 116 Nassau Street, New York City, and signed "P. B. Chase," and ask you if you recognize it? A. I do. 2

Q. Was it received by the Vitagraph Company? A. Yes.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the same objections to this paper, also that it is incompetent.

The paper offered is received in evidence and marked by the Examiner "Defendants' Exhibit No. 120," and is as follows: 3

Defendants' Exhibit No. 120.

Letterhead of

P. B. CHASE'S AMUSEMENT ENTERPRISES.

Nov. 29, 1902.

The American Vitagraph Co.,
116 Nassau St.,
New York City.

Gentlemen:—

I am in receipt of the following communication: "Mr. P. B. Chase, Chase's Theatre, Washington, D. C. Dear Sir: This is to inform you that the Vitagraph Motion picture machine in use in your theatre is a flagrant infringement of our patent No. 586,953. We beg to advise that this patent was adjudicated in the Southern District of New 4

1 York, by Judge Hazel in a decision in that court about a month ago, to wit on Oct. 21st. This decision was in a suit filed by us against the American Mutoscope and Biograph Co., in which we asked for \$150,000 damages and an accounting for profits. Their defense was non-infringement, non-validity of the patent, etc. The Judge decided in our favor on all points. We will hold you responsible for this infringement. Yours very truly, Armat Moving Picture Co."

2 Replying to your communication of Nov. 28th, I quite agree with you that it will be wise to alternate one week of the story films with one week of travel views and would suggest that you follow that plan in sending in to us. Among the spectacular series we would like Little Red Riding Hood, Beauty and the Beast, Cinderella, etc., and among the travel series a Tour of Venice, In the Alps, In Ireland, Fishing in North Sea, A Trip Across the Atlantic, and then I would not object to a midnight rescue, and airship. I think you get my idea and can govern yourself accordingly. Am in receipt of your notice that you will present Bluebeard December 8th.

Yours truly,

P. B. CHASE.

3

By Mr. KINGSLEY:

Q. Did the Armat Moving Picture Company send similar letters to other customers of The American Vitagraph Company about that time? A. Yes, to almost all of them.

Mr. GROSVENOR: That is, in 1902?

The Witness: Yes.

4

Mr. GROSVENOR: I object to the answers of the witness, and move to strike them out, on the grounds heretofore stated.

Thereupon, HARRY MARSEY, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged? A. Exhibiting, and running theatres.

Q. What kind of theatres do you manage? A. Motion picture theatres.

Q. Where are you located? A. Buffalo, New York.

Q. Have you a motion picture theatre in Buffalo? A. Yes.

Q. Where is it located? A. The Happy Hour Theatre, 525 Main Street, Buffalo.

Q. What is the seating capacity of the Happy Hour Theatre? A. Three hundred and forty.

Q. Do you own any other theatres in Buffalo? A. Not now.

Q. Do you own any other theatre elsewhere? A. No, sir, not now.

Q. Have you owned any other theatres. A. Yes, sir.

Q. Prior to this time? A. Yes, sir.

Q. And where have they been located? A. Three of them on William Street, Buffalo; one at Black Rock, Buffalo, or Grant Street, you might say. One at North Tonawanda, three at Niagara Falls, and two at St. Catherines, Ontario.

Q. Were these all small theatres, or did some of them have larger seating capacities than the one you now manage? A. Yes, some were larger.

Q. How long have you been engaged in the theatrical, or exhibition business? A. Just six years today.

Q. Is this the anniversary? A. This is the anniversary, yes, sir.

Q. From what rental exchange are you taking motion pictures now? A. From the General Film Company.

Q. How long have you been taking motion pictures from the General Film Company? A. Ever since they were in existence.

Q. From what rental exchanges did you take pictures prior to taking them from the General Film Company? A. Buffalo Film Exchange.

1 Q. Where was the Buffalo Film Exchange located? A. Buffalo, Thirteen East Genesee Street.

Q. Did the Buffalo Film Exchange sell out to the General Film Company? A. I understood so.

Q. And for how long a time had you been taking motion pictures from the Buffalo Film Exchange? A. 1907 to 1910, I should judge, in that neighborhood.

Q. You had been with them pretty constantly since you went into business? A. Yes, sir.

2 Q. When you went into the theatrical business and began exhibiting motion pictures, did you have any difficulty with respect to keeping your programs clear? A. Yes, sir.

Q. Did you have any difficulty with respect to the repeating of pictures? A. Yes.

3 Q. Can you give us some instances of the difficulties you had with respect to keeping your programs clear? A. The very first experience was at Niagara Falls, my first year in business down there, December, 1907. The difficulty I did not notice until about January, 1908. The International Theatre was getting film direct from New York. I was getting mine from Buffalo, and many a time, we would get the same reels on the same day, or he would get some ahead of me. Very often he would get some ahead of me.

Q. He was getting his service from a New York exchange? A. Yes, sir.

Q. And you were getting yours from a Buffalo exchange? A. Yes.

Q. So there was no way that you could be free from each other's programs? A. Yes.

Q. Was this an annoyance? A. Yes.

4 Q. Was it expensive? A. Yes, sir; it drove us to considerable expense at the time. It drove me up to Buffalo each week to get the service.

Q. Did you try to get a better service? A. Yes.

Q. Did you offer to increase the price? A. Yes, sir. I offered to pay a higher price for the service, to get ahead of the other fellow.

Q. Did you, in reality, pay a higher price? A. Yes.

Q. Did this trouble continue for some time after 1908? A. In 1908 I was at St. Catherine's, and the same thing happened there.

Q. And did you find that this difficulty prevailed up

to the time that you began taking service from the General Film Company? A. Yes. 1

Q. And you found it difficult to keep clear from your competitor? A. Yes.

Q. After you took service from the General Film Company, did you have further difficulty with respect to duplicating your program with your competitor or competitors? A. No. At the time I opened up on William Street, there was no trouble in getting the service whatever. The program was divided between two houses, one of my opposition houses, and mine.

Q. You were kept free from conflicting programs? A. Yes. 2

Q. You were both taking them from the same branch of the General Film Company? A. Yes.

Q. Have you found it possible, in the past two or three years, to advertise programs in advance? A. Oh, yes.

Q. Do you do it? A. Right along.

Q. Are you able to make up your program so that you may advertise it definitely and feel certain that you can produce it on the day designated? A. As far as we can see ahead, yes. I can do that two weeks ahead. 3

Q. And do you do that right along? A. Yes.

Q. Do you find that the General Film Company branch in Buffalo co-operates with you to make up a satisfactory program? A. In every respect.

Q. Do you ever make requests for special pictures? A. Yes.

Q. Are you able to get them? A. Yes.

Q. Now, in 1907, 1908 and 1909, did you find it possible to advertise a program of pictures in advance? A. No, we did not have any programs in advance.

Q. Did you ever advertise in advance only to find that your competitor had the picture just before you did? A. He jumped in ahead of me. 4

Q. What was your answer? A. My competitor would jump in and get it ahead of me, or somebody else would get the reel that I was supposed to get from the Buffalo Film Exchange.

Q. Did you have this trouble on more than one occasion? A. Yes.

Q. What projecting machine are you using in your present theatre? A. Powers 6-A.

1 Q. What machine have you used in most of your theatres? A. Mostly Powers. I have used the Edison considerably, but not as much as the Powers.

Q. What do you say of the quality of the licensed service during the past four years? Has it improved or remained stationary? A. It has improved considerably.

2 Q. Do you find that there is competition between the licensed producers of motion pictures with reference to striving to attract the attention of the exhibitor and getting him to ask for their particular productions? A. You mean that the licensed producers of pictures are advertising and soliciting for the trade?

Q. Yes. A. Yes.

Q. Do they send you circulars? A. Yes.

Q. Do they call attention to their pictures, which they consider of special merit? A. In the trade journals, there is, practically every week, mentioned something that they are requesting the exhibitors and customers to take.

Q. Are there any unlicensed exchanges in Buffalo? A. Yes.

Q. How many? A. Five.

3 Q. How many licensed exchanges? A. One.

Q. Do these five unlicensed exchanges have representatives in the field? A. Yes.

Q. Soliciting business from the exhibitors? A. Yes.

Q. Do they come to see you frequently? A. Quite often.

Q. Do they offer you a definite program? A. Yes. That is, two of them offer definite regular programs. The others are just what they call features, every now and then.

Q. Do they offer you any inducements in the way of lower prices? A. I cannot say to that, no.

4 Q. Do they solicit you frequently or infrequently? A. Frequently.

Q. What do you say as to the price of the motion picture service since you have been taking it from the General Film Company? Has it increased or diminished? A. Do you mean in comparison with the service that I used to get from the Buffalo?

Q. Yes. A. Proportionately, it has diminished. I am getting more reels now—more than twice as many reels now as I used to get, and proportionately, I am not paying twice as much money. On one occasion, especially on William Street in Buffalo, where the Savoy Theatre was

running half the program and I was running the other, I was getting twenty-eight reels for \$40 a week, where I used to pay \$50 for ten reels at the Falls, and the age of the films shown on William Street was only between four and ten days, and down at the Falls, was between thirty and ninety days.

Q. And yet the price for the William Street service was smaller? A. Yes, it was lower.

Q. As a general proposition, is an older picture of less value than a new picture? A. Yes.

Q. That is the rule of the service, is it not? A. Yes.

Q. And the prices are largely dependent, are they not, on the age of the pictures? A. On the age of the pictures. The condition of the pictures.

Q. What do you say as to the condition of the pictures which you rent now? Are they in good condition? A. Yes, as a rule.

Q. Did you have any difficulty in the beginning of the business with respect to getting old and worn pictures? A. Yes, considerable.

Cross examination by Mr. GROSVENOR:

Q. Mr. Marsey, you live in Buffalo? A. Yes, sir.

Q. And today is an anniversary for you? A. Yes.

Q. Did you come down to New York to celebrate your anniversary, or to testify in this suit? A. To testify in this suit.

Q. Were you subpoenaed? A. No.

Q. You were just asked to come? A. Yes.

Q. Your expenses paid? A. That I cannot tell. I have not gone into that at all.

MR. KINGSLEY: We will concede that they will be paid.

The Witness: Probably. It has not been mentioned as yet, but I thought it would be. I have not asked for that.

By Mr. GROSVENOR:

Q. You have had eight or nine theatres in the course of your experience in running theatres? A. Yes, sir.

1 Q. And in all these theatres you have shown moving pictures? A. Yes, sir.

Q. And have all of these theatres been theatres in which you have shown the licensed product? A. No, sir.

Q. In the theatre which you now own, you do show the product of the licensed manufacturers? A. As a rule, with some exceptions.

Q. How long have you been having exceptions? A. Only two weeks ago I ran three Mutual reels.

2 Q. Before that, were there any exceptions to your showing only the licensed product? A. No. Not at that particular theatre. No.

Q. Do you have any other theatre today? A. Not today, but I did have. While I was running the same one, I was running others as well.

Q. You had some so-called independent theatres? A. Independent houses, yes.

Q. You gave those up? A. No; sold them.

Q. You sold those? A. Yes. They are running today.

3 Q. Are special features an important part of the program shown in your theatre? A. Why, yes, special features is, today.

Q. Why is that? A. It seems it is the general sentiment of the people. They want to see features or productions produced in more than one reel. It is a case where everybody is doing it, and we had to do it too. I, personally, do not favor it.

Q. But you find it necessary to show them? A. Exactly.

Q. In December, 1908, where did you have a theatre? A. I had one at Niagara Falls and two at St. Catherine's.

4 Q. Do you remember what projecting machines you were using in 1908? A. Yes. I used one Powers, one Motiograph, and one Edison. I had three theatres at that time.

Q. And those machines had all been sold to you without restriction or condition, had they not? A. Yes.

Q. And after the Patents Company was formed, you commenced to pay a two dollar a week royalty on those theatres? A. For a short time, yes.

Q. You said there are five unlicensed exchanges in Buffalo. Please name them. A. The Victor Film Service, Mutual Film Corporation, Warner Features, Sedec Features, I think—I am not acquainted very well with them; they have just

got there; the World's Special Film Corporation, and the International. 1

Q. How many reels do you use a day? A. Four.

Q. And do you change your service every day? A. Every day.

Q. How many of those exchanges that you have named can give you a complete service and change of service; that is, four new reels every day? A. Only the General.

Q. The General Film Company is the only one that can do that? A. The only one that has four clean reels a day to give me. 2

Redirect examination by Mr. KINGSLEY:

Q. What do you mean by four clean reels? A. That they buy. They are buying forty-seven reels a week, and they can give me a half, and the other half to the other house below.

Q. How many can the other people supply you? A. One concern has twenty-one, and the other one has twenty-eight. They buy that many. And in order to keep it apart from not repeating on the same street, they cannot offer any more than fourteen to a house. 3

Q. But that twenty-one reels that one offers you is not the same as the twenty-eight reels that the other concern offers you, is it? A. No.

Q. So that there is really available in Buffalo, forty-nine reels? A. There is more than that. There is about sixty reels available in Buffalo a week.

Q. You mean by that that there is about sixty unlicensed reels available in Buffalo each week? A. Yes, sir.

Q. Couldn't you make up a complete service out of the sixty reels? A. Yes, but not any one individual company could offer me a complete program. They offer me a part program. 4

Q. Couldn't the one with the twenty-eight give you a complete service? A. Yes. They could only serve one house.

Q. But, serving one house, they could give a complete service? A. Yes. They could give twenty-eight reels.

Q. What other theatre did you have which was using unlicensed service? A. The Temple Theatre on William Street, in Buffalo.

- 1 Q. Where did you get the service for the Temple Theatre?
A. The Victor Film Service.
Q. Did you get a complete service at that time? A. Yes.
Q. How long ago was it that you had the Temple Theatre?
A. Up to a year ago last August.
Q. And how long did you have it altogether? A. A year
and a half.
Q. And during the whole year and a half was it an unli-
censed house? A. Unlicensed.
Q. You had a complete program for the whole year and
a half from the Victor Exchange? A. The Victor Exchange,
2 yes.
Q. How large a theatre was it? A. Six hundred people.

Whereupon, at 11:30 A. M., the hearing is adjourned un-
til 2:30 P. M., at the same place.

NEW YORK CITY, December 1, 1913.

- 3 The hearing was resumed pursuant to adjournment at
2:30 o'clock P. M., December 1, 1913, at Room 159, Manhat-
titan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon, L. W. ATWATER, the next witness produced
by defendants, of lawful age, being first duly sworn by the
Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

- Q. Where do you live, Mr. Atwater? A. In Brooklyn.
Q. What is your business? A. I am connected with the
4 manufacturing of motion picture machines, in connection
with the Nicholas Power Company.
Q. By "motion pictures machines" you mean projecting
machines, especially? A. Yes, sir.
Q. How long have you been connected with the Nicholas
Power Company? A. Six years last month.
Q. In what capacities have you been connected with the
Nicholas Power Company? A. I started in as order clerk,
handling the orders and correspondence, and passing through
to the time that the Sales Department was formed, and
since that time in the Sales Department.

Q. When was the Sales Department formed? A. I should say about three or four years ago, as near as I can recall. 1

Q. During the time that you have been connected with the Nicholas Power Company, have you been familiar with the prices of projecting machines which the Nicholas Power Company has been selling to exhibitors of motion pictures?

A. I have.

Q. What is the trade name for the machine sold by your company, the Nicholas Power Company? A. The Camera-graph.

Q. Were you with the Nicholas Power Company in 1907? A. Yes, sir. 2

Q. Were you familiar with the prices of projecting machines listed in the Nicholas Power Company's catalogue in 1907? A. I was.

Q. What were the prices of the projecting machines that were sold by the Nicholas Power Company in 1907? A. They were known as No. 5 Model machines. Listed at \$140, \$155, \$175, \$185 and \$195, according to the different equipment of each type.

Q. How did the \$140 projecting machine differ from the \$155 machine? A. The \$140 machine did not have the take-up attachment. 3

Q. And how did the \$175 machine differ from the \$155 machine? A. The \$175 machine had the fire-proof magazines on it.

Q. How did the \$185 machine differ from the \$175 machine? A. The \$185 machine was fitted with a Style A automatic fire shutter.

Q. And how did the \$195 machine differ from the \$185 machine? A. The \$195 machine was equipped with a Style B automatic fire shutter.

Q. During the years 1907, 1908 and 1909, what types of machines were the most in demand among the exhibitors? A. No. 5. 4

Q. That is the model which you have just described? A. Model No. 5 of the \$175, \$185 and \$195 type.

Q. When did you add another type of machine to your list? A. In October, 1909.

Q. What was the name of this machine? A. No. 6 Model.

Q. What was the price of the new machine? A. \$225.

Q. Did you continue to keep in stock the \$175 machine, at that time? A. We did.

- 1 Q. Did you continue to keep in stock the \$185 machine?
A. We did.
- Q. And did you continue to keep in stock the \$195 machine? A. We did.
- Q. Did you continue to keep in stock the \$155 machine?
A. Yes, sir. Well, that was a variation of the \$175 machine. We could take the \$175 machine and take off certain attachments and make it a \$155 machine, or a \$140 machine.
- Q. Did you continue to do that from time to time? A. Yes, sir; all the time, with both of those models.
- 2 Q. Did you build any new type of projecting machine, and add it to your stock after 1910? A. Yes, sir.
- Q. And what was the name of that new machine? A. No. 6A Model.
- Q. What was its price? A. \$250.
- Q. Did you, subsequently, make any changes in the No. 6A Model? A. Yes, sir; the addition of the automatic loop.
- Q. And did that cause an increase in price? A. Yes, sir; it increased the price to \$260.
- Q. Did you keep the two machines in stock just the same?
A. Yes, sir.
- 3 Q. Did you still have the No. 6A model without this attachment? A. Yes, sir.
- Q. What was the price of that? A. \$250.
- Q. Did you still have the No. 6 type at \$225? A. Yes, sir.
- Q. Did you still have the \$195 type? A. Yes, sir.
- Q. And did you still have the \$185 type? A. Yes, sir.
- Q. Did you still have the \$175 type? A. Yes, sir.
- Q. Did you still have the \$155 type? A. Yes, sir.
- Q. Then you had these types of machines for sale up to 1913? A. Yes, sir.
- 4 Q. During the period to which I have referred, has there been a time when an exhibitor could not buy a \$155 machine and pay exactly that sum for that projecting machine, \$155?
A. If he went to the Nicholas Power Company to buy it, no, sir.
- Q. Since you have put these various types of machines on the market, has there ever been a time when an exhibitor could not buy any one which he chose to select? A. No, sir.
- Q. Why are the different types of projecting machines listed at different prices? A. It is due to the added improvements and attachments. The main body of the No. 5 ma-

chine is the same, but there are attachments put on it which make it more expensive, due to improvements. 1

Q. Can you say that these various types of machines, which are listed at various prices, embody various improvements? A. Yes, sir.

Q. What is the difference in a projecting machine which you sell at \$155 and a projecting machine which you sell at \$260? A. The difference is in the entire makeup of the machine. You might say there that the \$155 machine, for instance, has a wooden table board. The \$260 machine, or the \$250 machine, has an all-iron stand, doing away with the wood altogether. Also, it has an additional automatic setter, which improves the picture on the screen. The \$155 model machine did not have that. The lamp house is more expensive; the model is larger and the arc lamp has a greater carrying capacity of amperage, and the mechanism is more solidly built. 2

Q. Is it a heavier machine? A. It is a heavier machine throughout, yes.

Q. Is there any difference in the intermittent motion in the models you have described? A. Yes, sir.

Q. In what respect is it different? A. The intermittent movement in a No. 6 and a No. 6-A is much heavier and more substantially built, and is a radical departure from the old style cam movement. 3

Q. Have you found it necessary from year to year to make improved types of projecting machines in order to meet the requirements of fire underwriters in the various municipalities which have passed ordinances? A. Yes, sir.

Q. And have you endeavored to do this from year to year? A. Not from year to year, but as the requirements are made by the different underwriting bureaus on us, we have changed the types. 4

Q. Is the fact that some of the projecting machines carried in your stock cost more than other projecting machines, based upon an attempt to make the exhibitor pay more than the machines are worth because you have a license under the various patents? A. No, sir.

Q. Whenever you made a new type of machine, did it have a definite equipment? A. Yes, sir.

Q. Have you ever raised the price of any projecting machine with a definite equipment? A. No, sir.

1 Q. Would you say each increase in price represents an addition in equipment? A. Yes, sir.

Q. What has been your experience with respect to exhibitors selecting the improved and highest priced machines in preference to those of inferior and cheaper models? A. Practically soon after a new model comes out, the demand is for the new model.

Q. Do you find that the exhibitors usually insist on having the best type of machine in the market? A. That varies as to the class of the exhibitor. As a rule, I think the majority of the exhibitors now demand the best type of machine.

2 Q. And what has been the effect upon the sale of inferior models after the construction of a new type of projecting machine? A. It has fallen off to a great extent.

Q. Have you ever done anything, or has your firm ever done anything to compel an exhibitor to take a higher priced projecting machine in preference to a lower priced projecting machine? A. No, sir, only advertised it in preference to the other types, or the older types of machines.

Q. At the present time, what machines are in the greatest demand by exhibitors? A. The No. 6 and No. 6-A models.

3 Q. Did you, during any of the period to which I have referred, and that is, during the time from 1907 to 1913, ever sell new machines and take old machines in part payment for them? A. We did.

Q. What did you do with the old machines thus obtained? A. We rebuilt them.

Q. Did you sell those rebuilt projecting machines to the exhibitors? A. Yes, sir.

Q. Did you sell them at a price below the price you asked for a new projecting machine of the same type? A. Yes, sir.

4 Q. Did you sell those rebuilt machines at lower prices in competition with your own machines? A. Let me have that question again.

Q. Did you sell those rebuilt machines at a lower price in competition with your own machines? A. Yes, sir.

Q. Will you give us some idea, Mr. Atwater, of the size of your establishment, and the amount of business that you do? A. We have two factories, employing in the neighborhood of three hundred men.

Q. Do you mean three hundred men in each factory, or one hundred and fifty men in each factory? A. One hundred

and fifty men in each factory. We turn out on an average of between four and five thousand machines a year. 1

Q. How many? A. Between four and five thousand machines a year.

Q. Is the Nicholas Power Company one of the largest manufacturers of projecting machines in this country? A. I think it is the largest.

Thereupon, J. A. SCHUCHERT, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 2

Direct examination by Mr. CALDWELL:

Q. Mr. Schuchert, where do you live and in what business are you engaged? A. Buffalo. Branch manager of the Buffalo branch of the General Film Company.

Q. How long have you occupied that position? A. Since July 4th, 1910, and since the time when the Buffalo Film Exchange was turned over to the General Film Company. 3

Q. And prior to July, 1910, in what business were you engaged? A. The film renting business. I had the Buffalo Film Exchange; I was manager of it, and owned the majority of the stock.

Q. That was a corporation organized under the laws of New York? A. Yes, sir.

Q. And in what territory did that exchange operate? A. Through western New York, as far east as Syracuse; down through the southern part of the State, to Binghamton; the northwestern part of Pennsylvania, and west as far as Erie, Pennsylvania. 4

Q. You say you were part owner of the stock. Who were the other principal owners? A. Mr. Rowland and Mr. Clark, and Mr. Hayman.

Q. Messrs. Rowland & Clark; are they the gentlemen who were also the owners of an exchange in Pittsburgh? A. Yes, sir; and another one in Rochester.

Q. And what was the name of that other exchange? A.

1 At Pittsburgh, the Pittsburgh Calcium Light & Film Company.

Q. And the name of the one in Rochester? A. The Pittsburgh Calcium Light & Film Company, of Rochester.

Q. Was it the same or a different corporation? A. A different corporation.

Q. Were you interested in the Pittsburgh Calcium Light & Film Company, of Rochester? A. Yes, sir.

2 Q. So that you were interested in the exchange that they conducted at Rochester, and they were interested in the exchange which you conducted at Buffalo? Is that right? A. Yes, sir.

Q. How long were you part owner and manager of the exchange which you conducted at Rochester, under the name of the Buffalo Film Exchange? A. From about 1907, the latter part of 1907.

Q. Then you had managed that exchange for several years before you sold to the General Film Company? A. Fully two years and a half.

3 Q. You have stated that you sold your Buffalo Exchange to the General Film Company in July, 1910. Whom did you see in reference to that sale? With whom did you conduct your negotiations? A. Mr. Kennedy and Mr. Waters.

Q. What price did you sell it for? A. We sold the two offices at one time for \$63,000, part of it in stock and part of it in deferred payments.

Q. How much in preferred stock and how much in deferred payments? A. Eighteen thousand dollars of preferred stock and forty-five thousand dollars in deferred payments, and our merchandise, in addition to that, was inventoried and paid cash for. What I mean by merchandise, is machines, supplies and parts.

4 Q. Did you consider that a fair price for those two exchanges? A. Yes, sir.

Q. How much were the combined net earnings of those two exchanges for some time prior to the date of the sale? A. Ten thousand dollars a year would be a good, fair estimate of the profit.

Q. Had your exchange been making any money for a period of four or five months prior to the sale to the General Film Company?

The Witness: No.

1

By Mr. CALDWELL:

Q. Then what was the condition of the business that those two exchanges were doing at the time they were sold? A. The conditions in the territory were very bad. They were not making any money on account of competition from other exchanges who were handling the same line of goods.

Q. Were you aware at the time you sold to the General Film Company that there was a clause in the exchange license agreements between the Buffalo Exchange and the Patents Company, and also between the Rochester Exchange and the Patents Company, permitting the Patents Company, on fourteen days' notice, to cancel the exchanges' licenses without cause? A. Yes.

2

Q. Did that clause have any effect on you in determining whether you would sell or not? A. No, it did not. I was satisfied to sell on account of the unsettled conditions, and the price that they offered me. I felt that if I wanted to go into the exchange business again I could do so.

Q. What do you mean by that, that you could go into the exchange business again? That you wanted to get another license from the Patents Company? A. No; I could go into the independent business.

3

Q. Did you consider at that time that the service offered by the so-called independents was sufficient in quality and quantity to enable you to do an exchange business, if you decided to take on that service and go into that business? A. Yes.

Q. Was any threat or intimation made to you by any officer of the General Film Company, or anybody else, that if you did not sell, your exchange licenses would be cancelled, or that the General Film Company would maintain a competing branch in Rochester, or in Buffalo? A. No.

4

Q. Will you describe briefly the condition of the exchange business in your territory at the time you sold? A. Why, there was another company doing business in Rochester by the name of the Motion Picture Supply Company, and they were selling their goods at a loss; and whenever we would get a customer and give him a service of a certain number of reels, they would probably come in and get a competitor to put in newer film for even less money. So that conditions

1 were very unsettled. We were not assured of having a customer for any length of time. We could not base our purchases on the amount of business we were doing, and we were afraid from one day to the other that we would lose these customers.

Q. What other licensed exchanges were there in Buffalo, if any, at that time? A. None in Buffalo.

Q. Was this Motion Picture Supply Company, to which you have just referred, owned or operated by a man by the name of Palmer? A. Palmer & Mock.

2 Q. Did you have any conversation with Mr. Palmer about the time you sold to the General Film Company? A. Yes; I had some conversation with him.

Q. On the subject of the conditions in the exchange business? A. Yes, sir; being very bad. In fact, we talked the matter over, and they even cut down the number of purchases of their films on account of conditions there—

Mr. GROSVENOR: That was a licensed exchange, was it?

3 The Witness: Yes. Then, later, after the sale had taken place, Mr. Palmer told me the only reason he was hanging on to it was because he contemplated selling to the General Film Company. He apparently knew of it several months beforehand.

By Mr. CALDWELL:

Q. Do you know whether he did sell? A. Yes, he did sell; he sold his at the same time we sold ours.

4 Q. Then you had not been making any money for some time before you sold to the General Film Company? A. Not for six months before that time, no.

Q. At the time you sold your exchange, had the General Film Company opened a branch in your territory? A. No.

Q. Or near you anywhere? A. No.

Q. Were they trying to compete with you? A. No, sir.

Q. Had you ever heard any remarks to the effect that they were going to open a branch there? A. No, sir.

Q. How long was this Motion Picture Supply Company in existence before you sold out? A. About a year and a half, during one year of which they were conducting an inde-

pendent exchange, and then they were granted a license, and, to the best of my recollection, they were doing business for about six months under that license. They offered at one time to move out of the territory on account of the business being so bad, or conditions being so bad, if we would give them a certain amount of money; that they would move down into some Southern territory. We did not accept it at that time, and just shortly after that, the General Film Company purchased our business, and also theirs.

Q. You were in business during the year 1907, were you not? A. Yes, sir.

Q. As an exchange? A. Yes, sir.

Q. And operating in the same territory that you continued to serve as a licensed exchange? A. Yes, sir.

Q. Were you familiar with the conditions which prevailed in the motion picture business during the year 1907? A. Yes, sir.

Q. Will you state what those conditions were, Mr. Schuchert? A. We were then supplying film to exhibitors at about the rate of one reel to a show. Some of them only used two to three changes per week, and they would make shipments to various cities, and sometimes those customers would hold out our films, and sub-rent them to other theatres.

Q. Well, did you know during the year 1907 of the litigation between the Edison Company and the Biograph Company over the patents? A. I heard of those.

Q. Was it a matter of common knowledge in the business? A. Yes, sir.

Q. Did that have any effect on the business, in your opinion? A. Yes. I was under the impression that the business would not last, and I did not want to put very much money into it.

Q. Did you have many inquiries from your customers, the motion picture theatres, as to the effect of that litigation on their business, and as to what might happen to them? A. Not so much in 1907 as following that, in 1908 and 1909.

Q. In 1908? A. 1908, I think it was.

Q. Did you ever handle any Edison films right after 1908? A. Yes, sir.

Q. Did you ever notice any labels on the boxes containing the Edison film prior to 1907, patent labels? A. I can't remember that.

1 Q. You knew, however, that it was claimed that the films were patented, did you not? A. Yes.

Q. Was the business in 1907 regarded as in any way stable? A. No, sir.

Q. Or durable? A. No, it was not.

Q. Motion pictures at that time were regarded more in the light of novelties? A. Yes, sir; there were only very small theatres and store shows here and there. The exhibitors were not reliable. We had to watch them close to get our film back at all, in a great many instances.

2 Q. It was looked upon more as a passing fad than as something that had come to stay? A. Yes, sir.

Q. Was there much attention paid to the age of the film at that time? A. No.

Q. I am speaking now of the year 1907? A. So long as you could give a customer or an exhibitor film that had not been shown in his city or locality, he didn't object to the age of the film.

Q. And even though it might have been introduced or exhibited last several months before? A. Yes, sir.

3 Q. Were you making a good profit in your business in 1907? A. A fair profit on the investment. In fact, I will say a good profit on the investment. We started the business on a shoe string.

Q. And by that you mean that you started the business on little or no capital? A. Yes, sir.

4 Q. And was that true of nearly all the exchanges in business at that time? A. Why, yes; I guess the majority of them started the same way we did. They went out and bought twenty-five reels of film from some other exchange which had been doing business, and they bought them at little or nothing, and then started in that way, and finally they got up to where they bought new film.

Q. In point of fact, did any of them have any considerable amount of money invested in their business at that time? A. I think not, no.

Q. And you knew many of them, did you? A. I knew a number of them in 1907.

Q. You were a member of the Film Service Association, were you not, in 1908? A. Yes.

Q. And at the meetings of this body, you met them? A. I became acquainted with practically all of the exchange men in the country.

Q. Was there as much competition between exchanges in 1907 as there is today? A. No. 1

Q. To what do you attribute the fact that the public takes greater interest in motion picture exhibitions today than it did in 1907 and 1908? A. The pictures are better, the theatres are better, the projections—in fact, the whole business is much improved since 1907.

Q. Does the drawing power or the popularity of the actors employed have anything to do with it? A. Yes; people go to theatres where certain actors are exhibited, and where the picture is displayed outside showing that they are to be seen there that day—that has a drawing power—the subjects, and sometimes the makes of the films, the title of the film, or of the play. 2

Q. In 1907 and 1908, what proportion of motion picture theatres would you say in your territory were mere store shows? A. All of them.

Q. Were there no substantially built theatres devoted exclusively to the motion picture art? A. No.

Q. What was the practice as to the change of programs at that time? A. Some used one reel, changed three times a week, and some used a reel, changed six times a week, and a little later added on an additional reel, making two reels to a change. 3

Q. When you say “a little later,” about what year was that? A. About 1908, the latter part of 1908. They went on up, and some used three reels a day, and so they kept adding, possibly every six months or a year, it seemed they kept adding to the length of the shows, until at the present time they are using an unlimited number—I mean by that, five, six, or seven, or eight reels.

Q. In the year 1907, it required very little method in the handling of the business of an exchange? A. Very little. 4

Q. As compared to the exactions of the business at the present time? A. Yes, sir.

Q. Then, would you say that because of the quick growth of the business in 1907, and the fact that little or no capital was required, that a man of small capital could make money where the same man, at the present time, would be an absolute failure? A. Yes.

Q. And many of them did make money at that time? A. Yes.

- 1 Q. What was the class of men, generally, in the exchange business at that time?

Mr. GROSVENOR: Not including yourself.

The Witness: Some of them were very shrewd fellows, and others again, I class as not being very smart, just ordinary—how will I class them?

By Mr. CALDWELL:

- 2 Q. Well, as business conditions have improved, the rule of the survival of the fittest has come into play, hasn't it?
A. Yes. It is much harder to conduct an exchange today, on account of the competition. The business is so much larger.

Q. Did you observe any change in the conditions after the formation of the Film Service Association? A. Slightly. We got a little better prices for awhile; worked together; in fact, our business grew right after that. We bought more film each week.

- 3 Q. I think you have said that you heard a good deal about patent litigation during the year 1908, or more that year than you had heard in the previous time? A. I came in contact with the people who discussed that more, on account of attending the Film Service Association meetings.

Q. Then, during the year 1908 and prior to the formation of the Patents Company, did business conditions improve, so far as related to the character of pictures that were being turned out? A. Yes. The pictures improved.

Q. Did your business increase during the year 1908? A. Yes.

- 4 Q. To what cause did you attribute that? A. To the increased number of theatres, and the manufacturers seemed to put out a better grade of film, and had regular release days, which, to the best of my recollection, previous to that, were not released on regular dates.

Q. Did the rules and regulations of the Film Service Association tend to improve methods in supplying the exhibiting theatres? A. Yes, it did. To me, it brought me in contact with other men in this line of business, and through my meeting them, and conversation, I had more confidence in the business. Also, the increased number of theatres had helped us.

Q. And tended to bring the business into more regular channels? A. Yes. 1

Q. Now, then, how did you find the exchange business from the beginning of 1909 up to the time you sold to the General Film Company, in July, 1910? A. The beginning of 1909?

Q. Beginning in January, 1909. A. Our business in 1909 was fairly good. In the beginning of the year 1910, when the Motion Picture Supply Company came into the field, it was very bad. The fact of the matter is, it got so bad, the manufacturers were shipping our Rochester office C. O. D. While I never let that state of affairs occur in Buffalo, I always managed to pay my bills out of that branch. 2

Q. Was it a matter of common rumor that a good many of the exchanges were in financial straits at that time? A. Yes. In fact, as I say, our Rochester branch was, when we sold out to the General Film Company. We owed them quite a sum of money. We owed some of the manufacturers, in fact, as much as a thousand dollars, which in those days was quite a sum, and probably three weeks' releases of film.

Q. Was it common practice at that time for exchanges to own or be interested in the ownership of theatres? A. Not to my knowledge. 3

Q. There were some cases, though? A. Some cases. I was slightly interested myself, but not so as to interfere with my rental business.

Q. Did you attend the so-called Buffalo convention of the Film Service Association early in 1908? A. Yes. Was that in 1908?

Q. The latter part of 1907, or the early part of 1908. A. Yes.

Q. Of what class of persons was that convention composed? A. Of the exchange men. Film men. And there were also some manufacturers present. 4

Q. It was primarily, though, a convention of exchange men? A. Yes.

Q. And did you know of any manufacturers being present other than those who were interested in exchanges? A. Yes, I think there was.

Q. But did the manufacturers have any vote in the convention? A. No.

Q. Or attempt to control it? A. No.

Q. Or to dominate it in any way? A. No.

1 Q. Did you attend the convention of the Film Service Association early in 1909, shortly after the formation of the Patents Company in New York City? A. Yes.

Q. And I think you have already stated that your exchange took out a license from the Patents Company? A. Yes.

Q. At that time or about that time? A. About that time.

Q. There was a provision in that license agreement prohibiting the subrenting of film, was there not? A. Yes.

Q. Did you approve of that? A. Yes.

2 Q. Why did you approve of that provision? A. Because the subrenting business was harmful, from the fact that exchanges who were purchasing film, would open up a small film exchange and take their old film, junk, in other words, and open up a junk exchange, and go in and slash prices, regardless of whom they were hurting. The fact of the matter is, I think it was doing more harm to the business in general than it was to anyone else.

Q. Did it operate to prevent regular inspection and repair of the film, this sub-renting? A. I believe it did. While I had no experience—I never operated any branch office.

3 Q. The ordinary practice of an exchange is to require the return of the film usually after each exhibition, in order that it might be inspected and repaired before it was exhibited again? A. Yes, in the majority of instances. We have had, and do now have, a few what we call circuits, probably one theatre shipping to another, to save time in transportation, and also the cost of transportation.

Q. There never was anything in the Patents Company regulations that prohibited that circuiting of film? A. Not to my knowledge.

4 Q. To what extent was that done by your exchange? A. We had a few circuits, probably, that would cover a period of three or four customers.

Q. So that there would never be a time when the film was out from the office longer than three or four days? A. No.

Q. And was it always inspected and repaired after its return? A. After its return, yes. At the present time we discourage the shipment of films from one customer to another as much as possible. We try to have them all come back.

Q. In order that they may be inspected? A. In order that they may be inspected, yes.

Q. But at the present time, do you circuit your films to any extent, your branch office of the General Film Company? A. In a few instances we do. 1

Q. And will you, by way of illustration, state the places where it is done? A. For example, we ship to St. Mary's, Pennsylvania. They ship on to Kane, Pennsylvania; then from there to Ridgway. And Ridgway back to Buffalo. Because, if we did not do that, there is three customers that we would have to make each of them an individual shipment, losing a day going, and possibly a day coming back.

Q. And the expressage to the exhibitor? Would that be included in the cost of service to the exhibitor? A. At our office, we always made it a rule that the exhibitor pay express charges both ways, or from one customer to another, if it was on a circuit. 2

Q. There was a provision in the Patents Company license that each exchange should lease at least \$2500 worth of film per month. You are familiar with that? A. Yes.

Q. And did you object to that at the time? A. No. It was necessary for an exchange to have, in those days, at least that much film. That would only mean six reels of film a week. You could hardly handle a customer with any less than six reels. 3

Q. How many reels a week were you taking when you became a licensed exchange? A. At the Buffalo office we were purchasing eighteen—pardon me, do you mean licensed?

Q. When you became a licensed exchange? A. I should judge, about six.

Q. That would mean about how much per month? A. That would mean about \$2500 a month. I believe we increased it right after that to twelve reels a week, making about \$4,500, or nearly \$5,000 a month.

Q. Then you regarded the purchase or lease of \$2500 per month as the absolute minimum with which any exchange could conduct its business? A. Yes. Now, let me understand. The Patents Company license was granted in 1908, or 1909? 4

Q. The latter part of 1908 or the early part of 1909. A. We were buying twelve at that time.

Q. Then you wish to correct your former testimony? A. Yes.

Q. And twelve a week would amount to how much per

1 month? A. About forty-five hundred to five thousand dollars. Yes, fully \$5,000.

Q. And your exchange, was that considered a large exchange, a small one, or just a fair-sized, average exchange? A. Just a fair size.

Q. So far as the exhibitor is concerned, which is the more advantageous, to have his supply derived from an exchange which leases, we will say, for instance, eighteen reels a week, or from two exchanges, each leasing twelve a week? A. In my opinion, the one purchasing the eighteen reels.

2 Q. Why? A. Well, you can divide them up better. Two exchanges, each buying twelve, may both be buying the same makes, and there is a constant conflict between your customers.

Q. You mean each buying the same makes, you mean each would buy the more popular brands? A. The more popular brands. They would probably all be buying, for an example, Biograph, and certain makes that were in most demand, where, with a man with the eighteen reels, he could buy an assortment and divide them up between the customers, which would be to their better advantage.

3 Q. Then the man buying eighteen reels would have a greater variety than the two combined, each buying twelve? A. Yes.

Q. Do you recall that in the Patents Company license, there was a provision requiring the return of the film after the expiration of six months? A. Yes.

Q. At the time you became a Patents Company licensee, did you have on hand a large quantity of old film? A. Yes.

Q. In what condition was that film? A. The old film was in very bad condition. In fact, it was so bad that a great lot of it we could not use.

4 Q. And some of it was film that you had leased a comparatively short time before? A. Some, yes.

Q. And that, I assume, was in fair condition? A. Fair condition. That was being used every day.

Q. Did you send any account of the stock of films you had on hand to the Patents Company at the time you obtained a license? A. No.

Q. Do you recall when you first commenced to make a return of film to the manufacturers? A. In August or September, 1909.

Q. And what kind of film did you select to return? A. The very oldest, of any make, any age. 1

Q. Film that was practically useless? A. Practically useless. In fact, we even used to take the old film that the sprocket holes were torn out of, and some of it was clippings from films, taken out of films, and thrown in a pile. We would take and put them together. Any way, in order to make a thousand feet to send them back.

Q. A large part of the film that you returned you would have destroyed, anyway, wouldn't you? A. Yes.

Q. You had no market for it? A. No market. After it had been returned for a while, we really felt it was a good thing for us to keep our stock clean. 2

Q. Did you regard the film that you returned as of any value? A. No.

Q. Had you sold any film in 1908, prior to the time when you became a Patents Company licensee? A. Very little. I don't think we sold twenty-five reels.

Q. In point of fact, you tried to get all the value you could out of the film by renting it yourself, didn't you? A. Yes. I figured that eventually we would be better off by taking out this old film, off the market. It did away with what we called the junk exchanges, and, in that way, if you did not have the film, the junk film, or your competitor did not have it, he had to use a better grade of film, newer film. 3

Q. This old film that you returned, was it fit or unfit for exhibition? A. In my estimation, unfit for exhibition.

Q. Would a motion picture exhibitor today tolerate the pictures that were furnished to him in 1907? A. No.

Q. So far as the physical condition of the film is concerned, in point of scratches and being worn, and so forth? A. No. We could not supply them with the films or the quality of films that we did in those days. 4

Q. Based on your experience, how long a time may film be used and still be physically fit for further exhibition? A. That will vary. Some films are in excellent condition after a use of four or five or six months. Again, others will be in bad condition after a use of sixty days.

Q. But, on the average, what would you regard as the limit of utility of the film? A. After the film becomes four months old, it is very little use to us, and it is on the shelf the greater part of the time. I think four months would be a fair average. The majority of customers don't want film

1 after it is sixty days old. In smaller towns, where they cannot afford to pay very much, they use film after that age.

Q. In your territory, about how often would you say a film of average popularity is exhibited? How many times?

A. You mean not the number of theatres, but the number of times exhibited?

Q. That is right. A. Six to eight hundred times.

2 Q. Have you ever attempted since the Patents Company license was in effect, and before you sold to the General Film Company, to hold back certain reels which you found useful, from time to time, such as educational and special films of any character? A. Yes, we have held back some of them. Not so much of the educational film. If we get a good play—take, for example, something that was in demand, that the exhibitor wants, for instance, like Uncle Tom's Cabin. That film was in big demand, and we kept it for quite a long time; in fact, we have a print of it yet, and I think it must be at least two years old; but I don't know anybody that will run it any more now, it is in such bad condition. In fact, I sent it out about a week ago, and the customer said he could not use it. It was in too bad condition.

3 Q. Suppose the film was in good condition, that particular picture, and you offered it to an exhibitor today, what would happen? A. If it was in good condition and I offered it to him, I think he would take it.

Q. Is it difficult to get an exhibitor to take a play as old as that? A. If a new print were made of it, he would take it, but the old print that we have on hand, he does not want that, because there are so many pieces cut out, it would spoil the play. It has been damaged.

4 Q. The subject is of an exceptional character, and that is the reason why the exhibitor will take it? A. That is it. But as to the educational films, such as the scenic subjects, and those, there are enough new ones coming out every day, and I would not see any advantage in holding those back. In fact, there is not enough demand for scenic subjects to hold them.

Q. Did you find anything in the Patents Company license that operated to prevent you from accumulating a library of educational and scientific films if you had been disposed to do so? A. No. As I understood, we could return any age and any make. We always tried to hold those out that stayed in good condition and those that were in most demand.

Q. How many reels did you have on hand at the time you signed the Patents Company license? At the Buffalo office, I mean? A. Let me see—about 800 reels. 1

Q. Then for a period of seven months you continued to augment your supply, your stock on hand? A. Yes.

Q. So that when you first made your returns in September, you had added how many additional reels to your stock? A. Why, I should judge 300 or 350 more reels. Maybe 400 reels.

Q. And the number of releases were continually increasing, were they not, all the time? A. Yes.

Q. The number of prints, then, that you were taking were continually increasing? A. Yes. 2

Q. So that, at the time you sold your exchange to the General Film Company, how many reels did you have on hand? A. We had about 1,800 reels.

Q. Out of that stock, you could have, if there had been any demand for it, accumulated a library of educational, scenic and topical subjects? A. Yes.

Q. I think you have stated there is very little demand in your territory for educational subjects? A. Very little.

Q. A topical subject, doesn't that lose its interest very shortly after it is first exhibited? A. I don't get your meaning on that. 3

Q. Well, take a topical picture.

MR. GROSVENOR: Pathe's Weekly.

The Witness: Pathe's Weekly, yes.

By MR. CALDWELL:

Q. A picture which gives a current happening of the day? A. Yes, very quickly. 4

Q. It loses its interest almost like a daily newspaper or weekly newspaper, doesn't it? A. Yes. But until thirty days it goes fairly well, and after that time, there is hardly any call for it. Although we use it, there is very little call for it.

Q. There is a picture called "Ten Nights in a Bar Room," isn't there? A. Yes. That is the one I referred to a few minutes ago, I held that out.

Q. Did you try to get a customer to take that? A. Yes.

1 Q. Was it in good condition? A. Just last week a customer sent it back, saying he could not use it on account of being in bad condition.

Q. You knew of the provision in the Patents Company exchange license which provided that the films could be leased only to the exchange, and not sold? A. Yes.

Q. Did that make any difference at all in the way in which the exchanges were doing business at the time, so far as the service to the exhibitor was concerned? A. No.

2 Q. Did that operate to give you a more limited use of film than under the former arrangement, where you bought the films? A. No.

Q. It did not compel a continuous use of the films any more than under the former arrangement? A. Not any more so than it did previous to that time.

3 Q. What is the practice in your exchange as to ordering films from the manufacturers? A. I order them. Whatever I see fit to use, or whatever my customers demand. The films that the manufacturers who make them, and which the customers demand of us, those are the ones that we buy. By that I mean if they turn out good enough, we buy them.

Q. Do you have any dictation from the home office as to what films or what makes of films you should purchase? A. None at all. That is left entirely to our own discretion.

Q. Then, on what do you base your orders to the manufacturer? What is it that governs that? A. It is the customers' demands.

4 Q. Suppose you have an expression of opinion from a customer that he prefers films of a certain manufacturer. Do you supply him with those films, to the exclusion of others of the other manufacturers? A. We do.

Q. In other words, you would cancel a standing order from one manufacturer, if there was no demand for it? A. We would. Take, for instance, for example, one manufacturer who might only be making one reel a week. We do not have his films at all. Another manufacturer sells us seven a week, and we buy them all, because there is a demand for it.

MR. GROSVENOR: You are speaking of the licensed manufacturers?

The Witness: Yes.

1

By Mr. CALDWELL:

Q. Was it advantageous or not to an exchange that there should be a definite release day prescribed by the manufacturers? A. It is of advantage to have a release day for your first run customers. For example, you can promise him certain makes of films on those days, and go right down the line and give them two-day old, three-day or ten-day, for whatever price they are willing to pay.

Q. And by reason of this regularity of releases, could you make them a definite schedule on which the exhibitor could depend? A. We could.

2

Q. Without that, you could not? A. Not as to age. In these days the exhibitor is very particular about the age of films.

Q. During the year 1908, and prior to the organization of the Patents Company, do you know whether it was more or less common in your territory for an exhibitor to obtain part of his service from one exchange and the balance from another exchange? A. Some exhibitors did that. It has not worked out very successfully. There were always some mistakes or errors in the return of film to us, or conflicts in a great many ways. It did not work out satisfactorily.

3

Q. After the Patents Company was formed in 1909, was there much trouble in your territory on that account? A. You mean about two exchanges?

Q. Yes. A. No, we did not supply them that way any more.

Q. I think you have stated that yours was the only exchange in your territory up to a comparatively short time before you sold to the General Film Company. A. Yes. Well, now, pardon me on that. There were some competing exchanges in there before this Motion Picture Supply Company. We had Albany, for example. They were competitors of ours.

4

Q. Do you know who was located in Albany? A. Mr. Harrington, who owned the Actograph Company.

Mr. GROSVENOR: Then you referred at another point on your direct examination, to the Rochester company, which was also in competition.

- 1 The Witness: The Motion Picture Supply Company.
That was in 1910.

By Mr. CALDWELL:

Q. Would it result in any confusion, two exchanges supplying the same— A. Very much. It was always a question of one exchange beating out the other, or customers showing film one before the other.

- 2 Q. Did it ever happen that an exhibitor would sometimes return the wrong picture? A. Where two exchanges were supplying one exhibitor?

Q. Yes. A. Very often.

Q. Did that create confusion and dissatisfaction among the exhibitors? A. Yes.

Q. Before your sale to the General Film Company, did you find it more convenient to collect the exhibitors' royalties and remit to the Patents Company, or have the Patents Company collect direct from the exhibitor? A. Found it easier to collect it from the exhibitor, and we remitted to the Patents Company.

- 3 Q. Then you were in favor of that change, were you? A. Yes. We added it on to the price of his service. For instance, if we figured a man's film service at \$50, we would quote him fifty-two. In that way we would collect the royalty and remit each week with our report to the Patents Company.

Q. Were you restricted in any way by the Patents Company as to the customers that you might take on? A. No, we could take on any customer that we could get. We would submit the name of his theatre and the name of the customer to the Patents Company, and I do not ever recall of having any of them turned down.

- 4 Q. You did not have to apply first to the Patents Company for a license for the theatre? A. No, we did not. Only in the case of where an exhibitor's license had been cancelled.

Q. You assumed, as a matter of course, when you sent the exhibitor's royalty, that if he was not licensed, then he would be? A. He would be, yes.

Q. Unless it was an exhibitor whose license had been theretofore cancelled? A. Yes.

Q. You were not limited territorily by the Patents Company as to what customers you could take on? A. No, we operated wherever we could get business.

Q. You could operate in the territory for which your exchange was licensed, and anywheres else where you could get customers? A. Anywhere where we could get any business. 1

Q. In point of fact, however, there are certain geographical limits within which an exchange can successfully operate? A. Yes.

Q. Why is that? A. It never has been worked out to me, but there is this, if you would take a customer at too great a distance from your office, the loss of time in transportation would be too great. You could not rent the film at a profit. 2

Q. Do you know whether the licensed manufacturers were competing between themselves in the years 1909 and 1910, before you sold to the General Film Company? A. Oh, yes, they were competing against one another. They would try to induce us to buy their film. Even went so far as some of the manufacturers coming to Buffalo with sample prints or copies of their films and running them off. I remember, in some instances, of inviting the exhibitors to a public exhibition of certain makes of film.

Q. Did they advertise extensively in your territory? A. They did. Customers would receive advance notices, photographs and synopses of the films. 3

Q. Did they attempt to influence your customers to take their own brands of film at that time? A. By advertising, they created a demand, because of which sometimes we were compelled to buy certain prints. I know of instances where we were compelled to buy more than one print of a certain brand of film.

Q. Does this competition of the licensed manufacturers continue up to the present time? A. As far as creating a demand among the customers, it does, but they do not come to us to solicit. I hardly ever come in contact with the manufacturers of the films at all now. 4

Q. Based on your own experience, has there ever been such a thing in the film exchange business as a definite or market price of service to the exhibitor? A. No.

Q. What is it that influences that? A. The competition amongst the exhibitors. Take in a certain city or locality where there are a number of large theatres, they compete for the service; one tries to get ahead of the other, and that has a tendency to drive up the price of film.

1 Q. Did the General Film Company, after its purchase of your exchange in 1910, increase in any way the cost of service to the exhibitor? A. No, they did not.

Q. How do prices compare in your territory with prices that prevailed prior to the sale to the General Film Company? A. In my opinion, the prices are no higher now. While we handle a larger number of films, a greater volume of business—but the price, the average price per customer, taking into consideration the number of films that he uses, is not any higher today than it was before the formation of the General Film Company. For example, a certain customer was paying \$200 a week for twelve first-run films. That is two every day. That same customer, today, gets three first-run films per day and one about three days old.

Q. For what price? A. For the same price, namely, \$200.

Q. Were prices of service raised to the exhibitor in 1909, after the formation of the Patents Company? A. No.

Q. How do they compare with prices that prevailed before that? A. I did not notice any advance. The main object in the film business is to keep your film working without any loss of time. That is the most important. If you can have a film work every day instead of shipping it to Syracuse and leaving it lay on the shelf a day, if you can get somebody else to use it, if you only get \$50 a week, you have gained that much. While the first customer that uses it may be paying \$100, the one following, \$75—if you can sandwich one in between and save a day's use of the film and get \$50 for it, you have gained that much, and that seems to be the advantage today, that we work our film much faster and closer than we did in those days.

Q. Suppose an exhibitor came to your exchange and asked for a service of three reels daily, of which one picture was two days old, one ten days old, and one thirty days old, what would be your basis in arriving at a quotation to that exhibitor? What elements would you consider? A. First, I would see if I have such a service open, and if not, I would try to take it from some other customer, and I would figure how strong competition was in this locality where this customer was applying for service, and quote him a price. If a competitor would underbid me, no doubt I would beat his prices. We do that every day, beat competing exchanges, in making an effort to get the business.

Q. And what competing exchanges have you in your

territory now? A. We have the Universal, which is doing business under the name of the Victor Film Exchange; the Mutual Film Corporation, and there is the Warner's Features, who have an office, and at least a half a dozen other feature film exchanges doing business in our territory. 1

Q. When you said a moment ago that you might take the service requested away from another exhibitor, what did you mean by that? A. I would try and negotiate with him to see—if he was getting, well, we said there two-day old films, I might induce him to use a three-day old film by giving him either credit or some other make of film which he might prefer, or certain changes in his program, in that way opening up his film of the two days to get another customer. 2

Q. In other words, you would try to make an adjustment or an amicable arrangement? A. Positively. We do not deliberately take the film away from him without consulting him.

Q. Did it ever come to your knowledge that one exchange would threaten one of your customers, an exhibitor, that if he did not take service from him, he would supply such a character of service as to put that exhibitor out of business, or very materially affect his business? 3

Mr. GROSVENOR: Of what period are you speaking?

Mr. CALDWELL: Prior to July, 1910.

The Witness: Why, I did hear such remarks. I don't know how much weight there was to them. I have heard such talk as that, but I cannot recall whether those words were of any account. 4

By Mr. CALDWELL:

Q. To what extent is your branch of the General Film Company in competition with exchanges handling the Universal and the Mutual programs? A. We are in competition daily. Where we are using about forty-seven reels a week, each one of those offices, both Universal and Mutual, use about twenty-four each per week. I am conversant with the territory, and I know the two of them combined are supplying a greater number of their customers

1 with their forty-eight reels of film than we do with our forty-seven reels of film.

Q. How many customers have you in your exchange now? A. We are averaging about 165 to 175 customers per week.

Q. Has that varied much within the last two years? A. No. About the same.

Q. How many customers, if you know, are supplied by the Universal and Mutual people in that territory? A. In round figures, each of them has a hundred; over. To the
2 best of my recollection, the manager of the Mutual office told me—in Buffalo—told me that he was supplying a hundred and ten customers.

Mr. GROSVENOR: Objected to as hearsay.

By Mr. CALDWELL:

Q. You are brought in daily contact, are you not, with these various theatres? A. Yes.

Q. You are trying to get the customers that are now served by the Mutual and the Universal? A. Yes, sir.

3 Q. And they are doing the same in relation to you? A. Yes.

Q. So you keep a pretty close watch, do you not, on the various theatres, both licensed and unlicensed, in your territory? A. Yes, sir.

Q. That is part of your business, isn't it? A. Yes, sir.

Q. I think you have stated that when you first went into the motion picture business in Buffalo, the theatres were nearly all of them store shows? A. Yes.

Q. What is the character of the theatres in your territory now? A. Much better. They are large theatres, some
4 of them seating a thousand people. A number of them under course of construction will seat 1,500 people, devoted exclusively to pictures.

Q. Do the so-called independents supply as many large theatres in Buffalo as the General Film Company? A. Yes. We have the two largest theatres in the downtown district, each of them seating about a thousand people. The independents supply one and we supply the other.

Q. Take Rochester. That is the next largest city in your territory, is it not? A. Yes. 1

Q. What is the condition there as to the character of theatres served by your company and the other two? A. There are a number of large theatres there. Two of them, for example, each of which seat about 1,600. One is supplied by the independents, and the other the licensed. And there are a number of other theatres there that seat about a thousand. The business is equally divided.

Q. And how about Erie, Pennsylvania? A. In Erie we supply three of the leading theatres there. One of these customers is a man who owns two theatres, of which in one of them he uses licensed, and in the other he uses independent. He used licensed in both of those theatres up until four or five months ago, when he decided to use the independents in one theatre. While he is a personal friend of mine, he told me he should prefer to give me the business of this other theatre, but the independent film did more business for him there, and that he would continue to use that. That he was paying as much money for that independent film in that house as I quoted him, or, in fact, as much as he was paying me before he left me with that theatre. 2

Q. What other large cities are there in your territory? A. Syracuse. 3

Q. What are the conditions there? A. About the same. We serve in there, and so does the Albany branch of the General Film Company. We have the business divided there between us, and then there is the independents, who have just as much business as the two of us combined.

Q. And what class of theatres do the so-called independents serve in Syracuse? A. In fact, in Syracuse they have a larger theatre than we have. One, in fact, that was opened up on Thanksgiving Day, and the business was promised to us. They did not give it to us, though. They went to the independents. 4

Q. Did the independents outbid you? A. I presume it is a question of price.

Q. And how do your prices compare with the prices of the Mutual and Universal? A. I think they are getting fully as much money for their service. There might be a slight advance in our prices over theirs.

Q. Are you familiar with the character of pictures turned out by the Mutual and independent people? A. Yes, sir.

1 Q. How do they compare with the pictures turned out by the licensed? A. Naturally, I would say our own goods are the best. I feel our pictures are a better grade of pictures. Higher class. Our pictures are not as sensational.

Q. Each turns out a program of great variety? A. Yes.

2 Q. What other large cities are there in your territory outside of those that you have mentioned? A. Why, we supply Elmira. The business is fairly well divided there. We also supply Binghamton, and the Wilkes-Barre office also supplies in Binghamton. In fact, for quite a while, the Wilkes-Barre office put us really out of there. I mean the General Film Company.

Q. Bradford, Pennsylvania. What are the conditions there? A. At Bradford there are four houses, and we have two, and the Universal one, and the Mutual one.

Q. Are there many towns in your territory that have just three motion picture theatres? A. Yes, quite a number of them.

3 Q. How is the business divided in towns of that character? A. Those are divided, one for each—the General one, and the Mutual one, and the Universal one. Where there are four, usually we get two and the independents get two.

Q. And throughout your territory, would you say that the theatres supplied by the General Film Company, in point of capacity and accommodations, are any superior to those that are supplied by the independents? A. I would say they have just as good theatres as we have. I believe we have more of them, but I would say that they supply just as good theatres as we do.

4 Mr. GROSVENOR: You have more of the good theatres?

The Witness: We have more of them, because we have a larger supply to handle them.

By Mr. CALDWELL:

Q. You did not mean by that that you had more theatres that you were serving than the other two combined? A. No.

Q. How was this competition between the General Film Company and these unlicensed exchanges in the month of August, 1912—last year? A. I think competition was just

as strong as it is today. We did not handle any more customers then than we do now. We bought the same number of films. While the number of theatres has increased, the number of films has increased in proportion, but we are not handling any greater business—any greater amount of business.

Q. Does it often happen that you will get a customer that is being served by the Mutual or independent people?
A. Yes.

Q. Does it often happen that they will get a customer that is being served by you? A. Yes.

Q. And is there a constant switching back and forth of the customers? A. Back and forth of the customers. We have some customers who use Mutual film, and Universal, in conjunction with ours. They have used features in conjunction with ours.

Q. What competition do you have with the exchanges that are handling special features, such as the Famous Players Film Company, or the Warner Special Feature Company? A. We find that the features are cutting in on our business very strongly.

Q. Has the Famous Players Film Company entered actively into your territory? A. Yes.

Q. What theatres are they supplying in Buffalo or Rochester and Syracuse? A. They are supplying the large and higher grade theatres, and, as a rule, the theatre that takes the large feature, or a production of that kind, usually keeps it for two or three days—some of them, a week—advertising them extensively. And that puts us out of the use of our film in that house entirely during that period.

Q. Have they taken many customers that had formerly been served by the General Film Company in that territory?
A. Yes. They have taken a number.

Q. How active is the competition of the Warner Special Feature Company? A. Quite active.

Q. Do they have an agency in Buffalo? A. Yes, they have a branch office in Buffalo.

Q. How do they distribute their pictures, throughout the entire territory? A. Yes.

Q. Are there any other special feature companies that you are competing with in that territory? A. Oh, there are several. They are, of course, not recognized companies, but

1 just someone buys the state rights of a feature film. The World Feature Film. I cannot recall the names, really.

Q. And do they sometimes put their pictures in your theatres? A. Yes.

Q. And during that time you lose that patronage? A. Sometimes we do; sometimes the customer keeps our service and uses the other in addition.

Q. This competition, you say, was just as keen in August, 1912, as at the present time? A. Yes.

2 Q. How about your competition with the independents in the year 1911? A. Well, it was not quite as strong then as it was in 1912, or as it is today. There were not as many theatres to supply, either.

Q. But there was active competition at that time? A. Yes, there was.

Q. You were then constantly losing customers to the independents? A. Yes, they were changing from one to the other.

Q. And you were sometimes getting the customers of the independents? A. Yes.

3 Whereupon, at 4:30 P. M., on this Monday, the 1st day of December, 1913, the hearings are adjourned until Tuesday, the 2nd day of December, 1913, at 10:30 A. M., at the Manhattan Hotel, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889. Sept. Sess., 1912.	2
v.		
MOTION PICTURE PATENTS Co. and others, Defendants.		

NEW YORK CITY, December 2, 1913.

The hearings were resumed pursuant to adjournment, at 10:30 o'clock A. M., December 2, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

1 Thereupon, J. A. SCHUCHERT resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. Mr. Schuchert, to what extent are you permitted by the General Film Company, as branch manager of its Buffalo office, to adopt and enforce your own system of booking? A. It is left entirely with us to adopt any system we think would work out the best with our customers.

2 Q. What are the different systems of booking in vogue in the main office, and by you generally throughout your territory? A. There is the open booking, and there is what we call the lock system, locking a certain number of reels together, and running them over the circuit constantly, and then there is the schedule system, where you will give a man a certain age of films.

Q. Explain what you mean by the "open system of booking"? A. The open system is where a man comes in and selects the shows that he wants, by making his requests far enough in advance.

3 Q. Is that system in force in your territory? A. Well, I cannot call ours an open booking, and it is not the lock system.

Q. Explain more fully what you mean by the "lock system of booking"? A. The lock system is the putting of four reels of a certain age together, and keeping them that way, and sending them from one customer to another. That does not necessarily mean that they do not come back to the exchange again.

Q. That is, the four reels that are locked together, as you say, constitute one show? A. One show.

Q. And one evening's entertainment? A. Yes, sir.

4 Q. And there is no substitution of pictures in that way? A. No.

Q. They don't take out one picture of those four that are grouped together and undertake to substitute another picture in its stead? A. No.

Q. Will you explain, Mr. Schuchert, more fully what you mean by the "schedule system of booking"? A. A man comes in and wants a service; for example, he will take ten, twenty, thirty, or forty-day old film. We then decide, or we get his decision, on what makes he prefers to have, and we will schedule him up for those makes at those ages,

when we make his booking, and this is submitted to him every week on Wednesday or Thursday for the following week, if there are bookings in there that do not meet with his approval, we change them for him, giving him as near the same age as we have scheduled him, and that is with the understanding that a certain film which he requests is not already booked for his competitor. 1

Q. On the same night? A. On the same night, yes; or if he wants that reel and is willing to run it after his competitor, we will give it to him, but not before his competitor, unless he is willing to take it.

Q. It does not often happen that he is willing to run it after his competitor? A. No. 2

Q. This schedule is booked upon the release dates, is it not? A. Yes.

Q. And these pictures are advertised by the manufacturers a sufficient time in advance of their being released to enable the exhibitor to know precisely what he is getting? A. Yes, sir.

Q. And in the advertisements of these various plays, is the plot set forth? A. Yes, sir.

Q. And more or less outlined? A. Yes, sir. 3

Q. Are the advertisements accompanied by photographs, or illustrations, or scenes from these plays? A. Yes, sir.

Q. So that any exhibitor has a very fair idea of the exact character of the play that he is to receive a long enough time in advance for him to change it if he is not satisfied with it? A. Yes, sir.

Q. To what extent are the wishes of the exhibitor actually consulted by the branch manager in making up his program? A. It is left practically entirely to the exhibitor.

Q. Do you find that the exhibitors in your territory prefer to have you make up their programs for them, or do they prefer to come to you with a list of pictures which they would like to get? A. In our territory we find the exhibitor prefers to have us make up the program, and then, as stated before, he has the privilege of coming in and making such changes as he desires, if he comes in long enough in advance. 4

Q. And if he comes to you long enough in advance and tells you what pictures he wants you are usually in a position to satisfy his requirements, are you not? A. We usually are.

- 1 Thereupon CHARLES F. HARING, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged, Mr. Haring? A. Motion picture business.

Q. How long have you been in the motion picture business? A. Close on to six years.

- 2 Q. Are you an exhibitor of motion pictures? A. Yes, sir.
Q. Do you own or manage a theatre? A. Both.

Q. How long have you owned a theatre? A. I have owned one theatre six years.

Q. Where is this theatre located? A. Jersey City Heights.

Q. What is the capacity of that theatre at Jersey City Heights? A. Three hundred and fifty to three hundred and sixty seats.

Q. Have you managed your own theatre continuously during the past five or six years? A. I have managed that theatre for about six months.

- 3 Q. And what experience did you have in managing motion picture theatres prior to your experience with the one you now own, and which you have been managing for six months? A. Why, the conditions then and now are entirely different.

Q. I don't mean that so much, but what other theatres did you have prior to this one? A. At the present time we have eight theatres.

Q. What are the eight theatres you have now? A. All motion picture theatres.

- 4 Q. Where are they located? A. Why, Brooklyn, New York; Jersey City, Union Hill, West Hoboken, and Jersey City, in the State of New Jersey.

Q. Would you mind telling us in detail what those theatres are, and where they are located, giving the street numbers as nearly as you can? A. The Palace is at 419-421 Seventh Avenue, Brooklyn. The Airdome is at 425-429 14th Street, Brooklyn. The National is at Bleecker Street and Central Avenue, Jersey City. The Auditorium is at 299 Central Avenue, Jersey City. The New Amsterdam is at 100 Summit Avenue, West Hoboken, and the Arena is at John Street and Bergen Line Avenue, Union Hill. And another

Airdome, at 448-450 Central Avenue, Jersey City, and I guess that is all. I counted one that is in the course of construction, at 176th Street and Nicholas Avenue. That has a six hundred seating capacity, and the New Amsterdam has a thousand seats.

Q. How do your theatres run in seating capacity? A. The smallest one, the Auditorium, has 340 seats. They run from three hundred and forty, to a thousand seats.

Q. During the past six years have you been familiar with the motion picture service? A. Yes, sir.

Q. Have you had occasion to arrange for motion picture service for your theatres? A. I have always arranged the service for the houses.

Q. Are you taking licensed motion pictures in your various houses? A. At the present time, yes, sir.

Q. From what rental exchange or exchanges do you obtain your pictures now? A. Why, we get them now from the General Film Company.

Q. How long have you been taking pictures from the General Film Company? A. For about six months.

Q. And prior to that time from what exchange did you get your pictures? A. When I say six months, it might have been six or seven months. Approximately six months. And prior to that, we were getting service for three houses and two airdromes from the Greater New York; that is, five houses altogether, and the Brooklyn house, was at the Sixth Avenue branch of the General Film Company, and there was another, the Kinetograph branch, or the Kinetograph Company, on the 18th floor of the Twenty-third Street Building—the Kinetograph Film Exchange—that was within the last six or eight months. Previous to that, they were split up.

Q. Mr. Haring, prior to the time regarding which you have just testified, from what exchanges were the theatres with which you were connected obtaining their service? A. Prior to what time?

Q. Prior to the time you have just testified to, and by that I mean before they were with the General Film Company? A. Well, I will start from the beginning.

Q. Yes. A. Our first exchange was the Imperial Film Exchange, at 28th Street and 6th Avenue. From there we went to the 21st Street—

Q. And what exchange was that? A. I think it

1 was the Kleine Exchange, and now, as we go along, I will say we added house after house. Originally, we had one house, which was at Twenty-eighth Street and Sixth Avenue, and as we broadened out we started with different exchanges. If I recollect clearly, we used pretty nearly every exchange in New York but the People's Exchange.

Q. This was prior to the establishment of the General Film Company? A. Yes, sir.

2 Q. You had experience, then, with a number of exchanges in the years 1908, 1909, and 1910, up to the time of the formation of the General Film Company? A. Yes, sir.

Q. And after the formation of the General Film Company? A. Yes, sir.

Q. And at the present time you are taking, I think you said, all your service from the General Film Company? A. Yes, sir, outside of a few features, but our regular service comes from the General Film Company. If we feel we want any of the outside features, why, we get them.

Q. Do you announce a regular, definite program in your various theatres? A. Yes, sir.

3 Q. Do you announce it in advance? A. Yes, sir.

Q. For how long a period are you able to announce it safely in advance? A. Why, sometimes a week, and sometimes three days.

Q. Do you select your programs yourself? A. To a certain extent.

Q. Does the General Film Company co-operate with you in arranging a program? A. Well,—

4 Q. In other words, are you able to select a program in advance? A. Oh, yes. My program is arranged by the General Film Company, and upon requests that I send in now and then.

Q. Do you find it possible to keep clear from your competitors who are also taking service from the General Film Company at the present time? A. I do.

Q. Do you find it possible to keep clear from competitors who are not taking the licensed service from the General Film Company at the present time? A. Not very well.

Q. For instance, do you have any difficulty with respect to competing or conflicting programs on the part of competitors who are taking service from the Greater New York

Film Rental Company? A. Yes, sir. That happens very often in my case. 1

Q. Have you had the experience of advertising pictures and programs in advance, only to find that a competitor taking licensed service from some other exchange was able to show the pictures you advertised before you did? A. I am having that experience just now.

Q. Will you tell us something about it? A. Well, for instance, a three-reel picture released today by the Vitagraph Company, "The Wreck," that is the title of the picture—"The Wreck." That is a three-reel picture, or special; it is an unusual special, a feature extraordinary, as I would call it. I billed that picture for tomorrow, and, unfortunately, my nearest competitor is showing it today. 2

Q. And do you know from what rental exchange your nearest competitor gets his service? A. He gets it from the Greater New York.

Q. Is this special feature, "The Wreck," what is known as a picture of a train wreck? A. Yes, sir.

Q. Have you seen this picture of "The Wreck," yourself? A. No, I have not seen it; it is only being released today. It is very rarely that we see releases in advance. That was a request that I sent in. 3

Q. You made a special request for this particular subject, did you? A. Yes, sir.

Q. And was it granted? A. My service, I usually get these features three days old, and they gave it to me two days old, to which I didn't object.

Q. Then, you got a better service than you applied for? A. And a better service than I am paying for.

Q. Have you ever had any other experience with respect to competitors being able to show pictures you had advertised before you, yourself, had them? A. Well, in what period? 4

Q. Well, in any period within the past two or three years? A. Off and on we have had that same experience. We have had that same experience in Jersey City with a certain exchange. We were the only house, I believe, getting service from the General Film Company in Jersey City within eight or nine months, and we had that same experience there.

1 Q. Did you have a competitor who got film from some other exchange? A. Yes, at that time.

Q. And was he able to show the pictures that you had advertised before you could show them? A. Sometimes.

Q. You had that experience so often you do recall it? A. Yes, sir, I can recall it.

2 Q. Mr. Haring, did you have any experience with repeating or conflicting programs when you went into the business some five or six years ago? A. When I went into the motion picture business, things were very uncertain. There were fourteen releases. Two that we could not use, or would not use, and they were Lubin's and they were so nasty, and so bad, that we would not use them. Well, our exchange merely bought twelve reels. In other words twelve releases, and a three-reel program a day would mean the repeating on yourself of one reel every day, and two on your nearest competitor. We had only one clear reel a day when I first went into the business.

3 Q. What year was that? A. About five or six years ago. Then the film program improved, and as it improved it also increased, and as the output was increased, why, it enabled us to keep more clear the reels, that is, if you had an agreeable competitor, or if he was with the same exchange, but if not there was generally a run for life.

Q. Did you find that, if your neighbor, or your immediate competitor, would get service from a different exchange that in spite of your efforts there might be very serious conflicts? A. Yes, sir, that was the case in Jersey City.

Q. Even though you both tried to avoid it? A. Well, my competitor there was very unreasonable and he was obstinate, and you could not talk to him.

4 Q. What prices were you paying for service in 1908, and in the latter part of 1907? A. Between a hundred and a hundred and twenty-five dollars.

Q. What sort of service did you get for the price you have stated? A. I couldn't tell you the age of the reels. I could tell you the number of reels, or the number of films a day.

Q. Yes? A. Four.

Q. What price do you pay, now, for service? A. The same house that was paying five years ago \$115, approxi-

mately \$115, for a four-reel program, is paying \$50 today 1
for a five-reel program.

Q. Have you had that experience, or a similar experience with respect to all of your houses? A. I wouldn't want to say that. I just remember this one definitely. I had charge of that one.

Q. You have kept track of this particular house? A. Yes, sir.

Q. What is this house? A. It is the Auditorium in Jersey City.

Q. Were you able in 1907 and 1908, in the early years of the business, to arrange a program in advance, and advertise it with safety? A. At that time we were very glad to get any kind of a program. 2

Q. You had difficulty in selecting programs, then? A. We had no selection; there was no selection. There were only twelve reels. In other words, take what you could get, and say "thank you."

Q. This was in 1907 and 1908? A. About five or six years ago.

Q. What projecting machines do you use in your various theatres? A. Powers, 5 and 6, and Standard American. 3

Q. Do you find that the licensed producers of motion pictures are competing with one another for the favor of the exhibitors? A. You mean in the quality of the film?

Q. Yes, with respect to quality of the film, and with respect to advertising and calling your attention to the desirability of their products? A. It is natural. One tries to outdo the other, as far as I can see, and as far as the advertising to the exhibitor, I will say we get bulletins, press notices, and suggestions for music every day in the week.

Q. Do you receive requests in the form of circular letters and advertisements, urging upon your theatres the desirability of giving you certain brands of motion pictures, or the products of certain makers? A. Well, the requests come in in the form of these bulletins which are very explicit, and naturally we read the story and if the story appeals to us that is what we request. 4

Q. Do they keep you pretty well posted as to what they are doing and what they are producing? A. Yes, sir, all the time. I usually know two or three weeks in advance what is coming, especially as in a case like this Wreck, or some-

1 thing like that, not only through the bulletins but through the Morning Telegraph, the Sunday paper.

Q. Do the unlicensed producers of motion pictures and the unlicensed exchanges keep representatives in the field who are soliciting business from you and your theatres?

A. Yes, sir.

2 Q. Do they solicit the business frequently or infrequently? A. Well, the theatre film exchanges at the present time are soliciting the business frequently. It is nothing unusual to have an automobile stop in front of your door every day in the week. I can give you an instance: On Sunday evening I happened to be at one of my places, and a fellow came in and solicited my business on Sunday night. They are all looking for business. There is no question about that and particularly the feature film men, they are going after it, tooth and nail.

Q. Do the independent exchanges offer you complete programs? A. Oh, yes.

Q. Do they offer you any inducements in price to take their service? A. Not to my knowledge.

3 Q. Then you think the prices are about the same as the licensed service? A. There may be a slight difference, they may be a little more expensive.

Q. Do you mean that the licensed service is a little more expensive or the unlicensed service? A. The unlicensed, in my particular case. I went into one of the exchanges yesterday, just for my own benefit, to find out what the prices were, and I was comparing a five-reel program with one of ours, and it is a very little bit higher than the program that I am getting at the present time from the General Film Company.

4 Q. You say you are running feature films from time to time? A. Yes.

Q. Are those licensed or unlicensed films? A. They are both.

Q. You run whatever you like, in other words, in that respect? A. Yes, sir.

Q. Do you find that the motion pictures you receive from the General Film Company are in good physical condition? A. Yes.

Q. Have you felt, at any time as a manager of a thea-

tre or theatres, that you were obliged to take service from the General Film Company? A. No, sir. 1

Q. Have you felt free to take the service from whatever company or exchange you saw fit? A. Yes, sir.

Q. Have you found, at any time in your experience as an exhibitor, managing various theatres, and arranging programs of pictures, that there was a feeling among exhibitors that they were obliged, or that they were under some necessity of doing business with the General Film Company?

Mr. GROSVENOR: I object to the question as improper and hearsay, and calling for opinion evidence. 2

The Witness: You might repeat that question.

The Examiner repeats the question to the witness, as follows:

"Q. Have you found, at any time in your experience as an exhibitor, managing various theatres, and arranging programs of pictures, that there was a feeling among exhibitors that they were obliged, or that they were under some necessity of doing business with the General Film Company?" 3

The Witness: Why, you mean in reference to changing from one exchange to another?

By Mr. KINGSLEY:

Q. I mean with reference to feeling that they were obliged to go to the General Film Company, if they did not want to go? A. Why, you hear lots of rumors, but I personally never took any stock in them. 4

Cross examination by Mr. GROSVENOR:

Q. What were the rumors that you did not take stock in, Mr. Haring? A. Why, for instance, a number of the exhibitors would come to me and say, "Now, I would leave the General Film Company, today, but if I would go to such and such a branch, they are going to impose a penalty of ten or twenty per cent. on me for changing. What do you

1 think I ought to do?" I said, "I don't know anything about it." Those were the rumors.

Q. That is, there were rumors that something might happen to him if he did change?

Mr. KINGSLEY: I object to the form of the question, as the answer of the witness speaks for itself, the witness having specified that a penalty of ten or twenty per cent. might be imposed, according to the exhibitor's idea of the situation.

2 A. That is what I said.

Q. Mr. Haring, you have had during the last three or four years, at all times, from three to eight theatres running? A. No, sir.

Q. How many theatres have you had on an average in the last three or four years at one time, that is, either yourself or been interested in? A. Three years ago we had about five; four or five.

Q. And since then the number has gradually increased? A. Yes, we are building number eight, now.

3 Q. Have you, during these three years, shown in all your theatres the so-called licensed pictures? A. I think so. Outside of a special feature, now and then.

Q. The exhibition of special features not made by any of the so-called licensed manufacturers, has been the exception, then, to your regular program? A. Excluding two weeks in Brooklyn.

4 Q. Did one of your theatres in Brooklyn go independent for two weeks? A. No. We took over a house at No. 419 and 421 Seventh Avenue, Brooklyn. There were six other houses in the neighborhood, running licensed service, and I thought it might be possible to give them an independent service; in other words, to keep away from repeating on people that were already there. I installed an independent service, and it just lasted two weeks.

Q. You found it unsatisfactory? A. Absolutely.

Q. So that, then, you made the seventh licensed theatre in that neighborhood? A. Yes, sir. And I think there are eight there, now. And that was just about a year and one month ago that that house started with the Weiss branch of the General Film Company. That is the first house that went to the General Film Company a year ago.

Q. Then, you felt, in order for that theatre in Brooklyn to be successful, or to remain successful, it was necessary for you to change from the independent to the licensed service? A. It certainly was necessary there, or I would not be there today. 1

Q. When was that? In 1911 or 1912? A. We opened that house on October 18th or 19th of 1912.

Q. Now, let us consider the situation in October, 1912. You stated that you wanted the licensed pictures for that theatre, didn't you? A. No, I did not say that.

Q. You said, that in order to keep that theatre going well, you felt it necessary to change from the independent to the licensed program. A. I did do that; if I could do business and make money with unlicensed service, I would have been very much pleased, but I started my house with about \$35 a day and in two weeks, it gradually dwindled down to \$20 a day. The receipts were \$20 a day. Instead of going up, they went down. 2

Q. And, naturally, you wanted to change and get the licensed pictures, didn't you? I mean, you felt it necessary to do it in order to save your business? A. I felt the pulse of my audience, and they did not like the pictures that I was showing. I asked them what they did like. "Well, we don't see any of our popular players." "Whom do you mean?" "So-and-So." So I granted their request and have done business ever since, and I might say I am making money, too. 3

Q. In order to give them what they wanted, you felt that you should give them the licensed service?

Mr. KINGSLEY: I object to the form of the question on the ground that it is trying to make the witness say something he did not say, the witness having said he wanted to give satisfactory service, licensed or unlicensed. 4

Q. I am trying to be fair in my question. After ascertaining the wishes of your customers, you felt that they did want the licensed service? A. You can call it whatever you like. They wanted Biographs, Vitagraphs, Kalem, and so forth.

Q. And those are licensed service? A. Yes. That service was supplied by the General Film Company.

1 Q. Where, in October, 1912, could you go to get those Biograph, Vitagraph, Edison and other releases that you say your customers wanted, except to the General Film Company? A. Where could I go?

Q. Yes. Was there any place? A. Yes, sir. I will tell you where I could go.

Q. Where? A. I went to the Weiss branch, and stayed there a month and a half.

2 Q. The Weiss branch of what? A. Of the General Film Company. And I stayed there a month and a half. Then, I took that same house over to the Greater New York, because my nearest competitor was a Greater New York man, and they were hammering the devil out of me.

Q. Then, other than the Greater New York Film Rental Company, was there any other place you could go for those Edison, Vitagraph and Pathe films, except to the General Film Company? A. Now, are you speaking about thirteen or fourteen months ago?

Q. I am speaking of the condition in October, 1912. A. There were several other branches of the General Film Company that I could go to.

3 Q. But the only two sources of supply for you of those films were the General Film Company, having numerous branches in New York, and the Greater New York Film Rental Company, isn't that so? A. Yes.

Q. Are special features an important part of the program in your various theatres, Mr. Haring? A. Yes, sir.

4 Q. Why are special features an important part of the program? A. A majority of the special features are plays, reproductions of plays, and they enable the exhibitor—they give him an opportunity to advertise far better than the ordinary single-reel story; in other words, if I advertise a play by the name of, for instance, "The Octoroon," which was produced forty or fifty years ago on the stage, that will get me more money than "What Happened to Mary" or "What Happened to Jones."

Q. Because the title which you advertise is already known to a large body of your customers? A. It is the reproduction of a play that probably my grandfather saw.

Q. Isn't it customary to pay more to show a special feature on the release day than it costs to show the same special feature several days after the release day? A. Well,

several days would not make any difference. But several weeks might. 1

Q. Is there no difference between the first and the second and the third day? A. Very little.

Q. But there is some, isn't there, generally? A. In some cases.

Q. You stated on your direct examination that you advertised to show the special feature of the Vitagraph Company's "The Wreck," not on the release day, but on the day after the release day, is that right? A. Yes, sir.

Q. And your competitor got it and showed it on the release day? A. I would not swear that he showed it. I know that he advertised it. I left my home this morning at 8:30, and he does not open his theatre until 2 o'clock. 2

Q. Then he advertised it for today? A. Yes, sir.

Q. And today is the release day? A. Yes, sir.

Q. And you have simply advertised it for tomorrow? A. Yes, sir.

Q. Which is the second day? A. Yes, sir.

Q. Only you advertised it before he advertised it? A. I did.

Q. He has not gotten the very particular film that you were going to show on your projecting machine, so that you cannot show it tomorrow, has he? A. Not very likely. 3

Q. Who makes this Standard American projecting machine which you say is used in your theatres? A. Why, the American Moving Picture Machine Company.

Q. Prior to the formation of the Patents Company in 1908, had you bought, from time to time, various projecting machines? A. Yes, sir. Long prior to 1908. The first moving picture show that I bought had a machine, and as we opened more theatres, I believe machines came along, also. 4

Q. At the time the Patents Company was formed, you owned various projecting machines, did you not? A. Yes, sir.

Q. And those had been sold to you or acquired by you without any conditions or restrictions having been placed upon their use when they were sold? A. As far as I can remember.

Q. And did you thereafter, that is, after the formation of the Patents Company, begin to pay \$2 a week as a so-

1 called license for your various theatres? A. I never paid any \$2 a week separate. If it was included in my service, why, that may have been the case, but my service price was always a flat price. For instance, if I paid \$100 for a service, it was \$100, and not \$102. In my case.

Q. When did you first show in any of your theatres a special feature or picture made by a manufacturer not a licensed manufacturer? A. When?

Q. Yes. A. I could not remember that. I could not give you the exact day.

2 Q. It is within the last few months, isn't it? A. I would not say that. I showed some within a year and a half. A year.

Q. Did you ever have the license of a theatre cancelled? A. No, sir.

Redirect examination by Mr. KINGSLEY:

Q. Why did you go to the Greater New York Film Rental Company at the time you referred to a moment ago? A. From Weiss, you mean? This one particular house?

3 Q. Yes. You say they were injuring your service. A. They were not injuring my service, but they were feeding my nearest neighbor, and there was only one thing to do, either get him to go over there, or split it up.

Q. Did you leave the Weiss Film Exchange and go to the Greater New York Film Rental Company? A. With that house, yes.

4 Q. And then did you make an arrangement so that the program was split up, and there was no longer any conflict? A. Yes. Here is the way we split it up. All the releases of Monday, Wednesday and Friday went to one house, and all the releases of Tuesday, Thursday and Saturday went to the other.

Q. So that by going to the same exchange that was serving your competitor, you found it possible to make an arrangement to keep your programs clear? A. It kept me from running in there every day.

Q. You changed from one branch to another, did you not, from time to time? A. Yes, quite frequently.

Q. Did you ever have to pay any penalty on account

of the changes which you made? A. The only time I changed was when I could get better than I was getting. 1

Q. Did you ever know of anyone else who changed from one branch to another, who was obliged to pay a penalty? A. No.

Recross examination by Mr. GROSVENOR:

Q. Was this arrangement for dividing the service made by you with your competing theatre? A. Yes. With my nearest competitor and the exchange.

Q. That is, you and he went in together— A. That was my reason for going there. If I could not have made that arrangement, I would not have gone there. 2

Q. Yes. I am just trying to get at the way you did it. You went in with your nearest competitor to the exchange, and adjusted the matter between you so that he got the service on certain days, and you got it on the others? A. I did not adjust anything.

Q. How was it? A. I was pretty sore at this fellow.

Q. Tell us how it was done, not your reasons. A. Well, the manager of the exchange suggested the split. I did not like it very much, but that was the best I could get. The reason I did not like it was because this fellow was running vaudeville and I was not, and his fee was ten cents, the same as mine; in other words, he got as good a program as I did, and in addition to that he would give them two acts of vaudeville, which I did not give them. 3

Q. But the arrangement was arrived at by agreement between you and your competitor and the rental exchange? A. Well, it probably was, but my competitor was not there when the arrangement was made. He simply had to take his medicine, I guess, or simply get out.

Redirect examination by Mr. KINGSLEY: 4

Q. In other words, the rental exchange changed his service somewhat? A. Yes.

Q. You could not make this arrangement except by going to the same rental exchange that was serving him? A. Not very well.

- 1 MATTHEW HANSEN, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. 560 West 180th Street, New York City.

Q. What is your business? A. Motion pictures.

- 2 Q. Are you an exhibitor? A. I am the manager of the Square Amusement Company of Yonkers, at the present time controlling three theatres in Yonkers.

Q. What are the three theatres in Yonkers controlled by the company of which you are manager? A. Getty Square Theatre, 5 Getty Square; New Empire Theatre, 80 Ashburton Avenue; New Star Theatre—I think the number is 566 Nepperhan Avenue. I am not quite sure of the number.

Q. What is the seating capacity of your theatres? A. Getty Square is 462; New Empire, 386; Star, 300.

Q. How long have you been in the motion picture business? A. Five years this month.

- 3 Q. What other houses have you managed? A. I was part owner of the Longwood Theatre, 866 Longwood Avenue, and managed a theatre at 150th Street and Third Avenue. I don't recall the name of that house. I was there a short time.

Q. Are the five theatres you have described the only ones with which you have been identified? A. No; our corporation owned another one in Yonkers, the Riverdale Theatre, which we disposed of about eight months ago.

Q. How long were you connected with the Longwood Theatre? A. About fourteen months.

- 4 Q. At what time did you sell it? A. That was the first part—I believe, in January, 1910. January or February, I don't recall the month.

Q. During the time that you have been interested in the motion picture business, have you been familiar with the prices of motion pictures and with the character and quality of motion pictures? A. I have.

Q. And by the price of motion pictures, you mean the price of motion picture service? A. Yes. What the exhibitor pays weekly for the service from a film exchange.

Q. What kind of pictures are you using at present, licensed or unlicensed? A. Licensed and outside features.

What I mean by outside features is features that are made by different manufacturers in America and Europe. 1

Q. How long have you been using licensed pictures? A. I have been with the General Film Company now two years and four months.

Q. And before that time, from what exchange did you get your pictures? A. I used licensed pictures from the Weiss Exchange, on Sixth Avenue.

Q. And did you ever take licensed pictures from any other exchange except the General Film Company and Weiss? A. Yes. The Waters Exchange, on East 21st Street. 2

Q. And were those three the only ones from which you ever had licensed pictures? A. The only ones.

Q. How long have you been using the features, the special features, to which you refer, or outside features, I think you called them? A. I will tell you. I have got my booking book with me. I can give you the exact date. On Wednesday, August 13th of this year.

Q. What rental exchange served you before you began to take service from the General Film Company? A. The last one was the Waters Exchange.

Q. Do you make up a definite program in advance for your theatres at present? A. I do. 3

Q. How long have you been able to do that? A. Well, for the last year and a half I have always had my program three days in advance. At the present time I get it over a week in advance, and my features as far as three weeks in advance.

Q. Do you advertise your program in advance? A. I do. In a weekly pamphlet that I issue every week.

Q. Are you able to produce the program you advertise, on the day designated in the circulars and advertisements? A. I have not been disappointed up to the present. 4

Q. Do you personally select your programs or a part of your programs? A. I have that privilege if I desire. Some pictures I request. Others, I leave for them to fill in.

Q. Do you often request pictures yourself, special pictures? A. Every week.

Q. Do you get what you request? A. Providing the time is open on the day that I want the picture.

Q. Does the General Film Company co-operate with you in arranging your program to your satisfaction? A. They do.

1 Q. Before you became a customer of the General Film Company, did you have any difficulty in arranging a program in advance? A. Well, I never could, because I never knew what I was to get until the day of the show. Probably, one reel I was running what they call first runs, and the evening previous, why, I would call up at about 5 o'clock, and they would tell me that one reel. The others I got the next day when I called for the film.

2 Q. Did you try from time to time to arrange a program in advance, so that you might advertise it, and get the benefit of a larger custom? A. Well, I did on several occasions, but I stopped.

Q. You found it— A. Useless.

Q. Do you find it possible to keep your program clear from your competitor? A. I do.

Q. Do you have any trouble at present with repeaters? A. I never have repeaters. That is, on my own house. I run the special features of the General Film Company each day, and as there are eight reels, why, they have divided four for myself and four for my competitor. That leaves me two to repeat on him.

3 Q. Your competitor and you take your service both from the General Film Company? A. Yes.

Q. And you find that the program is so divided that you do not conflict with each other? A. No, we do not.

4 Q. Before you began to take your service from the General Film Company, did you have any trouble in keeping your program clear? A. Why, when I was at the Longwood Theatre, that is, before the formation of the General Film Company, I had two competitors there right within a block of me. We all dealt with different outside exchanges. We were all running first runs. The competition was very strong, and it often happened that the three of us would have the same first-day release on the same day, shown on the same day. But still I never knew that they were to get them. I was not able to advertise in advance, and neither were they. There was no way of avoiding it.

Q. Have you had any experience in advertising a special feature or program in advance and then finding that a competitor was, by his exchange, permitted to show these features or this program or a portion of these changes before you announced yours? A. No.

Q. You have not had that experience? A. No, I have not had that experience. 1

Q. What projecting machines do you use in your theatres? A. I use Motiographs.

Q. In all your theatres? A. Every one.

Q. Do you find that the producers of motion pictures are competing among themselves for the favor of exhibitors? A. I do. Advertising for scenarios. Each one; to me, it seems they are trying to outdo one another in sending advance matter to the exhibitor. For instance, the Vitagraph Company, they send you almost a magazine now, containing about fifty or sixty pages of every one of their daily releases with advertising matter and suggestions for advertising, and so forth. 2

Q. And do the producers of licensed motion pictures cooperate with you in advertising their special brands? A. They supply me with all the advertising matter. If I need cuts, I just write to the Publicity Department, and they forward me the cuts of the players at a very reasonable charge.

Q. How does the price of a motion picture service at present compare with the price of a motion picture service when you went into the business five years ago, in 1908? A. Well, like everybody going into the business, they have got to pay for their experience, and I think I did at the start. I paid then more than double what I am paying now, and I consider I have got a great deal better service at the present time than I did when I went into the business. 3

Q. What sort of a service did you have in 1908? A. I had one first run. I believe my second reel was fifteen days, one thirty-day release, and one what they call commercial reels. 4

Q. This was a four-reel program? A. Four-reel program.

Q. What service do you have now? A. Four-reel program from the General Film Company.

Q. What do you say as to whether or not the quality of motion pictures furnished by the licensed producers has improved in the past few years? A. Yes, I think they have improved greatly. They are taking more care of the detail of the picture. That is, the staging of the picture. The in-

1 terior settings are a great deal better. Where they were formerly crude, now they have the best of scenic artists, and furniture, and so forth, in their productions.

Q. Do you find that representatives of the unlicensed exchanges are soliciting for the business of licensed exhibitors? A. Oh, yes.

Q. And do they call on you occasionally or frequently? A. About once every three weeks or so.

Q. Do they offer you a complete program? A. Yes.

Q. Do they offer you any price inducements? A. Well, they offer prices on different service.

2 Q. Are you able to say how the price of complete unlicensed service compares with the price of a complete licensed service, whether it is higher or lower? A. Well, if you judge pictures from the age, which, of course, we do—at the Riverdale Theatre I ran unlicensed pictures, an unlicensed program, from the Western Exchange. That is the Mutual Company. And for the age of the pictures I got there, and comparing them with the age of the pictures I get from the General Film Company, I find that the Mutual prices were higher, judging from that standard.

3 Cross examination by Mr. GROSVENOR:

Q. Mr. Hansen, are these three theatres which you own at Yonkers all so-called licensed theatres; that is, theatres which display pictures of the so-called licensed manufacturers? A. I use both the licensed and the outside features, but I get a daily program for each house from the General Film Company.

Q. The bulk of your program, then, is made up of the supply of films which you get from the General Film Company? A. Yes, sir.

4 Q. You have shown these what you called outside features in your several theatres only since August 13th, 1913? A. Yes, sir.

Q. Today, in your several theatres in Yonkers, how many outside features are you showing? A. I am showing six a week.

Q. And two each day? A. I show two features each day in one theatre. In the Getty Square Theatre, I used one feature from the General Film Company and one feature from any outside source I can obtain them.

Q. So that in one of the three theatres you are exhibiting six reels of special features a week? A. Six reels, yes, sir. 1

Q. But some of those six reels come from the General Film Company? A. Well, I show twelve features in one house. In the Getty Square Theatre I show twelve features each week. One each day I get from the General Film Company and one from an outside source.

Q. And in your other two theatres you show only the so-called licensed pictures? A. Licensed, with every now and then, to strengthen the show, an outside feature. 2

Q. What outside feature are you showing today in this Getty Square house? A. A picture called "Dr. Nicholson and the Blue Diamond." It is in four reels, made by the Eclectic Company, of Paris.

Q. And who imports it? A. The Exclusive Feature Company, of 26 East 21st Street.

Q. Are special features an important part of the program in your several theatres? A. I consider it so, for the simple reason that up to three weeks ago at Getty Square, we were playing for a five-cent admission to the General Film program of four reels, and I decided to put in an outside feature each day and advance the admission to ten cents, and my business has just doubled. 3

Q. Have you at any time attempted, in any of your theatres, to exhibit the regular program of the Universal or the Mutual Film Companies? A. I did in the Riverdale Theatre. They are still using it in the house that we sold. We controlled that house for nine months, and in the nine months we ran the Mutual program.

Q. Then you sold the theatre? A. We sold it, yes.

Q. Was the theatre very profitable? A. Oh, yes. We sold it at a good advance over what we bought it for. 4

Q. Was your license ever cancelled by the Patents Company? A. No, sir.

Redirect examination by Mr. KINGSLEY:

Q. Is the Riverdale Theatre still running unlicensed film? A. Yes, sir.

Q. Still making money, still a prosperous concern? A. Yes, sir.

- 1 ROBERT ETRIS, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. CALDWELL:

Q. In what business are you engaged? A. Manager of the 23rd Street branch of the General Film Company.

Q. And where do you live? A. 1033 East 35th Street, Brooklyn.

- 2 Q. And how long have you been manager of the 23rd Street branch of the General Film Company? A. Since May, 1911.

Q. And before that time, in what business were you engaged? A. I was manager of the Lubin Film Service Exchange, owned by Mr. Lubin, in Philadelphia.

Q. And how long had you occupied that position? A. I occupied that position for, I think, about three years.

Q. And what time did you go into the motion picture business? What year? A. In the latter part of 1904, or the early part of 1905.

- 3 Q. And in what branch of the business were you engaged between 1904 and the time when you became the manager of the Lubin Exchange in Philadelphia? A. I went into the Lubin Exchange as assistant manager, retaining that position until 1907, when I then took the office of manager for Mr. Lubin.

Q. Then you were with Mr. Lubin during the years 1906 and 1907? A. I was.

Q. And 1905? A. I was.

- 4 Q. Did you know of the litigation in which Mr. Lubin was engaged with the Edison Company about that time? A. I knew none of the details. It was a matter of common knowledge that there was a great deal of litigation going on.

Q. Will you state, if you know, what effect that had on Mr. Lubin's business in Philadelphia?

Mr. GROSVENOR: I object to this line of questioning of the witness, the witness not being qualified, as shown by his last answers, to testify in regard to this matter. Of course, the proper witness would be Mr. Lubin, or someone having accurate knowledge both of the litigation and its effect.

Mr. CALDWELL: He stated that he was not familiar with the details of the litigation. He has stated that he had knowledge of the fact of the pendency of that litigation. 1

By Mr. CALDWELL:

Q. Now, I ask you if the knowledge that you had of the pendency of the litigation which you stated was a matter of common knowledge in Philadelphia—can you tell whether or not that litigation had any effect on Mr. Lubin's business?

A. It decidedly did in the branch in which I had charge. 2

Q. What effect did it have? A. Prospective investors were afraid to invest their money.

Q. In what? A. I recall a number of instances in which I tried to interest various investors whom I knew had money, men whom I knew had money, but they were afraid to go into the business on account of this litigation.

Mr. GROSVENOR: I object to this as irrelevant, and further, as not clear, the witness not disclosing what he tried to interest the proposed investors in, whether in his own business or some other business, or what they were to do. 3

By Mr. CALDWELL:

Q. What investments did you have reference to, Mr. Etris? A. In order to increase the business of the exchange, it was incumbent on me to get as many customers as possible. Therefore, as there were very few theatres in Philadelphia at that time, wherever I could possibly get hold of a man who might be interested in pictures, I would try to induce him to invest money, and open a theatre, with the object of securing him as a customer for Mr. Lubin. I found it a very difficult matter, on account of the constant fear that the litigation then going on would operate against the making of any money in the exhibiting business. 4

Q. In the year 1908, did you know of the litigation that was pending between the Edison Company and the Biograph Company over patents? A. I knew of it, but, of course, knew none of the details of it.

1 Q. Did you have any inquiry from any of your customers in Philadelphia about that time as to this litigation? A. They wanted my opinion as to whether or not it would be detrimental to their business, but I was unable, of course, to give them any satisfaction one way or the other.

Q. Did any of them express any fear that the result of the litigation might have a bad effect on their business?

Mr. GROSVENOR: I object to this as immaterial, incompetent, and calling for hearsay.

2 By Mr. CALDWELL:

Q. You may state whether any of your customers expressed any fear of the result of that litigation? A. They did, in numerous instances.

Q. They were uneasy, were they? A. Very.

Q. In what territory did the Lubin exchange, of which you were the manager, operate? A. In the State of Pennsylvania and as far south as Florida.

Q. Did you have many customers so remote as Florida?

3 A. Very few, the majority of them being in the neighborhood, in the South, of Richmond and Norfolk, Virginia.

Q. That is to say, the majority of your southern customers? A. Of the southern customers, of course.

Q. And where were the bulk of your customers located?

A. They were about evenly divided between local and shipping customers, distributed through the State of Pennsylvania and the South.

4 Q. Did you have much trouble in your territory with the sub-renting of film during the year 1908? A. A great deal in the South; in fact, to such an extent that we thought it advisable to open a branch office in Norfolk, which we did, placing a man in charge to watch our films in that territory to see that this sub-renting was cut down.

Q. Did you establish a branch in Norfolk for the purpose of distributing your film in that territory, Virginia?

A. We did, yes.

Q. And was that not only for the purpose of serving your customers more directly, but also for the purpose of keeping a close watch and inspection over your film, so that it might be repaired? A. That had a great deal to do with it. We had a circuit there through that section, and we found it

very hard to keep the films in proper condition. We had a system of having the customer receiving the film from the previous house, inspect the film and notify us of any film which he received in bad shape. That proved to be very unsatisfactory, however, and we decided later to open the branch office.

Q. Did you find anything in the rules or regulations of the Patents Company that interfered with your circuiting film whenever you found it advantageous to do so? A. Nothing whatever.

Q. Do you remember when you first commenced to return film under the Patents Company license? A. I don't recall that date. I recall that we were notified to return it, but as to the date, I do not recall.

Q. It is in evidence in this case that the first return of film commenced about September, 1909. Do you know how much of a stock of film you had at the Lubin Exchange at that time? A. I guess, close to 6,000 reels.

Q. What was the condition of those reels? A. The older reels were mostly in very bad shape, in fact, they were an encumbrance. We could not do anything with them. We simply carried them because we had no other place to hold them. We did not rent them at all after they became about eighteen months old. They were simply an encumbrance after that time.

Q. About how many did you have after the Patents Company license was issued in Philadelphia to the Lubin Exchange? A. To the best of my recollection, our stock was just about the figure I mentioned. Six thousand at that time.

Q. Hadn't you been adding some to your stock in the interim between January, 1909, and September, 1909? A. Yes, we were adding at the rate of about fifty per week, so that that would naturally make it larger, but we always carried about a 6,000-reel stock. It may have been within a thousand more or less, and I would not have known it.

Q. At that rate, it would make about 1,600 more reels that you had? A. It would.

Q. Out of that stock, of course, you commenced to return the film that was absolutely worthless? A. The very oldest on our shelves.

Q. With the stock that you had on hand, and still had

1 on hand up to the time of the sale to the General Film Company, was it practicable for you to have accumulated a so-called library of educational and scientific subjects, had you been so disposed? A. Oh, yes, we did to some extent set aside subjects that we considered of exceptional educational merit, to take care of requests from ministers and lecturers, and so forth.

Q. Those requests, however, were somewhat rare, were they not? A. Oh, yes; not a large part of the business by any means.

2 Q. Did you find much of a demand in your territory for so-called educational films? A. No, the demand was very small.

Q. Do you recall that under the Edison license, the film was sold to the exchange and not leased? A. Yes.

Q. Subsequently that was changed to a lease? A. Yes.

Q. And that in both cases the film was to be returned after the expiration of about six months? You recall that? A. I recall that.

3 Q. Did that change from a sale to a leasing system, in any way operate to the detriment of the exchange in serving its customers? A. None whatever. I was never able to notice any difference.

Q. It did not operate to compel a more continuous use of the film, in order to get the money out of it, than under the old arrangement? A. Oh, no.

Q. When was the Lubin Exchange sold to the General Film Company? A. About June or July of 1910, to the best of my recollection.

Q. Who were your competitors in Philadelphia prior to the time of that sale? A. Swaab, the Electric Theatre Supply Company, and Calehuff.

4 Q. Now, will you describe the conditions which obtained in the exchange business in Philadelphia during the years 1909 and up to July of 1910? A. The competition was very keen. None of us were making any money. It was a common practice to quote a man a certain price for service, and have one of the competing exchanges come to him and offer him a better price, or force him, or try to force him, to go to their exchange by means of getting the business of his competitor, and giving him a service that would be so new that, if we attempted to meet it, we would all be losing money. That was the common practice, and, I think,

was the cause of the fact that none of us made any money for at least two years prior to the time that the Lubin office was taken over by the General Film Company. 1

Q. Did you have much trouble in your territory as to conflicting programs and repeating? A. Constant trouble.

Q. Did you know of any instances of your customers being threatened by a competing exchange, that if they did not take service from them, they would be put out of business? A. Not in so many words, but, as I stated before, they would threaten to give the competitor a service that would hurt the business, hurt our customer's business, always aiming to bring our customers into their exchange. 2

Q. Did you have any conversation with Mr. Calehuff, of the Calehuff Exchange, with reference to the sale of his exchange to the General Film Company? A. I knew Mr. Calehuff very well. He had been a friend of mine for two years prior to the time that the Lubin branch was taken over by the General Film Company, and three weeks before the branch was purchased, he told me that he was very nearly out of business, very near failure. After they had purchased it, I had another long talk with him, and he expressed his delight— 3

Mr. GROSVENOR: I object to all this repetition of conversation as unimportant, hearsay, and irrelevant.

By Mr. CALDWELL:

Q. Proceed. A. He expressed his delight at the turn of affairs, as he said that it had saved him from bankruptcy.

Q. Do you know anything about the competition between the licensed manufacturers during the years 1909 and 1910 in Philadelphia for the business of exchanges? A. They were sending representatives around to see us right along from Chicago and New York, bringing films in a great many instances, to try and increase their orders. At that time, if I recollect correctly, we did not have a standing order. 4

Q. In the years 1909 and 1910 I am speaking of. A. I am a little hazy as to just when that standing order business began, but the manufacturers competed, the same as they would in any mercantile business. Their representa-

1 tives were calling on us continually and trying to influence us in the number of films that we should purchase.

Q. Were you in receipt of many circulars from them, offering their pictures? A. Oh, yes; every week.

Q. Describing their pictures? A. Describing them. Giving full description of every film which they were expecting to put on the market.

Q. Did that condition continue all the time you were in Philadelphia? A. Yes, it has continued right up to the present time.

2 Q. How many customers did the Lubin branch serve in Philadelphia while you were there? A. It varied from 115 to 130, or 135. They were constantly changing from week to week, from one exchange to the other.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M. of the same day, at the same place.

NEW YORK CITY, December 2, 1913.

3 The hearings were resumed, pursuant to adjournment, at 2:30 o'clock P. M., December 2, 1913, at Room 159, Hotel Manhattan, New York City.

The appearances were the same as at the morning session.

Thereupon, FREDERICK A. ANTHONY, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

4 Direct examination by Mr. CALDWELL:

Q. Mr. Anthony, where do you live, and in what business are you engaged? A. I live in Hackensack, New Jersey, and I am a broker.

Q. Were you ever, at any time, connected with the corporation known as E. & H. T. Anthony Company? A. Yes, sir.

Q. When was that? A. I became connected with them in December of 1888.

Q. What was the nature of the business conducted by

that corporation? A. The manufacturing of photographic materials. 1

Q. Will you state a little more fully just what you mean by "photographic materials"? A. We manufactured cameras, and dry plates, burnishers, printing frames, tripods, and we carried a general line of photographic supplies.

Q. Was that corporation engaged in the motion picture business at all? A. Not at that time when I became connected with it.

Q. Now, did that corporation ever, at any time, acquire the so-called Latham Loop patent? A. Yes.

Q. Will you state the circumstances under which it acquired that patent fully? A. I became acquainted with Mr. Woodville Latham in 1896 or 1897. He had been conducting a concern called the Idolscope Company, which was exhibiting pictures, and they got into some financial troubles, as I recall it, and he came to us and told us that he had patents in the patent office, and he wanted assistance to get them out; and we agreed with him to pay the expenses of getting out the patents, and carrying on any interference that might come up. 2

Q. When was this, about what time? A. That was about that time, along in 1897; it was quite early. The patent was in the office, as I recall, for some years. We made an agreement with him under that patent, or rather, in connection with that patent, and paid him some certain sum of money, I have forgotten exactly how much, and agreed to pay him a royalty, or give him an interest in what we might receive for the patent, if it was granted; and as to the exact details of that agreement, I have forgotten, and I do not now remember, but those were about the terms of the agreement, or the purport of it. 3

Q. In any event, did your company take over an assignment of that patent from Mr. Latham? A. It was issued to the E. & H. T. Anthony Company. 4

Q. Do you recall about what time the patent was issued, about what year? A. In 1902.

Q. Will you state what position you occupied with the corporation of E. & H. T. Anthony? A. I went there as secretary in 1888, and became secretary and treasurer in 1896, and subsequently, when the E. & H. T. Anthony Company, and the Scoville & Adams Company, and the Monarch Paper Company were combined, under the name of the An-

1 thony & Scoville Company, I became first vice-president and manager of that company. I was a director in all the companies that I mentioned, except the Scoville & Adams Company, prior to that.

Q. Did the Anthony & Scoville Company take over the assets of the corporation known as the E. & H. T. Anthony Company? A. They took over all the assets of the E. & H. T. Anthony Company, and the stock of that company was all assigned to the Anthony & Scoville Company. They took over all the assets of the Scoville & Adams Company, and of the Monarch Paper Company.

2 Q. Can you state about how much you expended for the Latham patent, under your agreement with Mr. Latham, altogether?

Mr. GROSVENOR: I object to that as immaterial.

Mr. CALDWELL: Counsel for petitioner appears to have thought it was very material that the Biograph Company paid only twenty-five hundred dollars for this patent.

3 The Witness: We spent in the neighborhood of eleven thousand dollars, and we carried the patent on our books at a valuation of ten thousand dollars. The expenses that went to make up the eleven thousand dollars were embraced in the manufacture of a number of those machines under that patent. We called them the Anthony Biopicon.

By Mr. CALDWELL:

Q. And what year was that you made these machines? A. That was about a year after we made the agreement with Mr. Latham, and some time before the patent was issued.

4 Q. And what did you do with those machines, those Biopicons? A. We had some of them on exhibition at our salesroom, at 595 Broadway. We sent one abroad, and we also used one as an exhibition machine in an advertising scheme. We hired a place at Twenty-ninth Street, or Thirtieth Street, and put up a screen, and used it to exhibit moving pictures, with advertisements in between. All this was before the patent was issued. Then we sent a man; in fact, a son of Mr. Latham, to Mexico, to make a number

of pictures of the interesting things down there. One of them was a bull fight, and another one was one of their annual exhibitions, sort of a crucifixion scene, that we thought would be interesting, and all of this cost us considerable money. 1

Q. Have you stated when the Anthony-Scoville Company took over the assets of the E. & H. T. Anthony Company?

A. That company was formed, I think, in the fall of 1901, or in November of 1901.

Q. And about that time took over the assets of the E. & H. T. Anthony Company, and, in with them, the Latham Loop patent? A. Yes, sir. It had not been issued, as I remember, at that time. 2

Q. What steps, if any, did they take to prevent any infringement of the Latham Loop patent about that time?

Mr. GROSVENOR: What time is that?

Mr. CALDWELL: About 1902, about the time they took it over?

The Witness: After it was issued?

By Mr. CALDWELL: 3

Q. Yes, after it was issued? A. A very short time after it was issued they notified the Mutoscope Company and the Edison Company of the fact that they were infringing the patent, and suggested that an arrangement might be made to our mutual advantage to combine the different patents owned by the different parties under one head, and while the Mutoscope Company was favorably disposed, Mr. Edison was not. He objected, and I learned that on account of the numerous litigations that there had been between these two companies— 4

Mr. GROSVENOR: I object to this statement of what he learned, as hearsay.

The Witness: —that they were not willing to work together. Mr. Edison didn't seem to feel very pleasantly toward them when I saw him.

Mr. GROSVENOR: By the Mutoscope Company were

- 1 you referring to the Biograph Company, which at that time had that name, American Mutoscope & Biograph Company?

The Witness: Yes.

By Mr. CALDWELL:

- Q. You spoke to Mr. Edison personally about this? A. I saw him in Orange. I went over there to see if we could make any arrangement with him to supply him with moving picture film, and I talked with him about his patent, and he told me that he didn't think that there was a very great future for the moving picture business, and that it was a fad, and therefore that it would not last very long, and he was not disposed to pool his interests with anybody else.

Q. And that was about the year 1902, was it not? A. It was in the latter part of 1902, or the early part of 1903, that I had that interview, I think.

- Q. Will you state the character of the business that was conducted by the Anthony & Scoville Company after it had taken over all these other concerns which you have just named, the E. & H. T. Anthony Company, and the paper company you referred to? A. The Anthony & Scoville Company also took over the control of the Columbian Photo Paper Company; at Westfield, Massachusetts, their factory was. That company manufactured a general line of photographic papers, a cyco paper, and a gelatine paper, and a platinum paper. It made the raw paper from rags, and at that same time that we took over the Columbian Company, the Anthony & Scoville Company took over the control of the Goodwin Film & Camera Company. That company had previously been in the control of Mr. R. A. Anthony, W. I. Lincoln Adams and myself. I had made an agreement with Mr. Courtland Parker, of Newark, who represented the estate of Mr. Goodwin, and under that agreement the control of the Goodwin stock, the stock control, was turned over to me. I then took the other gentlemen in, and when the Anthony & Scoville Company was formed they took over the obligations under that contract, and undertook to manufacture film under the name of the Goodwin Film & Camera Company.

Q. That was the first time, then, that your company became interested in the manufacture of film? A. The first time we became interested in the manufacture of "rolled film." We had made what they called "cut film" as far back as 1888, when I became connected with it.

Q. You spoke of taking over the obligations that were entered into with the Goodwin Company. This obligation was to manufacture film under the so-called Goodwin patent, and to prosecute infringers of that patent? A. Yes, that is correct.

Q. State what the condition was in respect to that?

Mr. GROSVENOR: Which patent was that?

The Witness: The Goodwin film and camera, that was issued to Hannibal Goodwin.

Mr. GROSVENOR: Was that a patent that related to the composition of the raw film?

The Witness: The base.

Mr. GROSVENOR: The base of the film?

The Witness: Well, the claim—do you want this to go on the record?

Mr. GROSVENOR: Everything you say goes on the record.

The Witness: Well, I didn't know.

By Mr. CALDWELL:

Q. You may proceed, Mr. Anthony.

Mr. GROSVENOR: I think this is immaterial, and I must object to this line of questioning as immaterial, relating, as it does, to another patent.

The Witness: The contract required us to manufacture this film without unnecessary delay, and we began to experiment to make the base for the coating. We found that the

1 small factory that Mr. Goodwin had built in Newark was not large enough to carry on any business that would amount to anything, and in the Fall of 1901, we began building a factory in Binghamton for the manufacture of the film. That factory was completed in 1902, and all during the year of 1902 we were busy in making machinery to manufacture the base, and the coating machines, making photographic paper, and we began the manufacture of a small folding camera, similar to a kodak, at our apparatus factory. All these things kept us fully occupied.

2 Q. State the character of the film that you were proceeding to manufacture under the Goodwin patent at that time, and for what purpose you intended to use it? A. The film we manufactured was used for making cartridge film.

Q. That is for use in the ordinary kodak, or camera? A. Yes, but that film is the same kind of film that is used for making motion pictures.

Q. Did you enter upon any litigation with the Eastman Company over the Goodwin patent, or any other patent?

3 A. We did, in the Fall of 1902, as soon as we had built our factory in Binghamton, and were in position to furnish the public with the cartridge form of film, we began a suit under the Goodwin patent against the Eastman Kodak Company, and early in 1903 they began a suit against us under a patent called the Turner patent, also relating to photographic film. Their patent was for the cartridge form of film and our patent was for the base itself, and those two litigations were carried on for several years.

Q. For how long were those litigations carried on? A. The Turner case took between four and five years, and the Goodwin case was just finished this year.

4 Q. Did the conduct of those two patent suits tax the resources of the Anthony & Scoville Company? A. Yes; the conduct of those suits and the building of the factory, and the putting of new goods on the market, and the making of the machinery, and we were obliged to borrow very heavily from our banks.

Q. Will you state now the financial condition of the Anthony & Scoville Company, commencing with the year 1902, and continuously up to the year 1908? A. In 1902, when the company was busy with its building, and the putting out of its new goods, it required a great deal of money, and we had to borrow quite heavily from the banks.

Q. Did you borrow about up to the limit of your borrowing capacity? A. Yes, sir; we borrowed up to something like \$300,000. And in 1903, along about June, one of the banks refused to discount our paper.

Mr. GROSVENOR: This was when?

The Witness: In 1903. And we were then obliged to notify the banks that we would have to have an extension, and the extension was granted, and it went along for a time, but at the end of six months we were obliged to take up five thousand dollars monthly on the old debt, and after doing so for three months we found that it was taxing us too heavily, and taking too much of our working capital, and that we were short in money, and I notified the banks that we could not continue under that arrangement. They then employed a firm of accountants to go over our books, and the accountants advised that we be given financial assistance. Some of the banks, however, were not willing to do this, and they withdrew. The others that were willing to extend assistance bought the notes which these banks held at a discount, and the control of the company, the stock control, was deposited with the committee of the bankers who employed the accountants to watch our business, and all checks and notes that we issued had to be countersigned by these accountants. They insisted that we reduce our expenses to the lowest possible point, and one of them told me he would like for us to stop—

Mr. GROSVENOR: I object to all this history on the further ground of its immateriality. It may be sad, but I do not see how it is relevant to any of the issues in this case, and relating to a period of time which is long anterior to the formation of the combination alleged to be unlawful.

Mr. CALDWELL: Its materiality ought to be very apparent to counsel for the petitioner when he considers that he is charging that the owners of the Latham patent were guilty of laches in not enforcing their rights under it during all of those years. Now you may proceed.

The Witness: One of the bankers told me that he would like for us to stop all the litigations, that they didn't care to

- 1 continue to advance money if we were going to use it up in that way.

Mr. GROSVENOR: What year was this?

- 2 The Witness: This was early in 1904, or the latter part of 1903. I told him that if we stopped the Turner litigation we could not manufacture the cartridge film, and that that was essential to our business, as it was necessary to have the film to supply dealers who purchased our cameras, the Eastman Company not being willing to sell their cameras or films to the dealers who purchased our cameras; and that if we stopped the Goodwin litigation, that contract would be cancelled, and it might fall into Eastman's hands, and be used against us. So they decided to allow the litigation to continue, but stated that we must spend as little as possible on them.

By Mr. CALDWELL:

- 3 Q. You may continue during the years 1903, 1904, 1905, 1906 and clear up to 1908. A. Well, during 1903, 1904 and 1905, the financial condition of the company was such that we were living practically from hand to mouth.

- Q. And did the affairs of the company continue under the management of this committee of bankers? A. Yes, sir; under their supervision. We were required to send down all of our accounts receivable as collateral for money they advanced, and along toward the end of 1905 we did not have enough accounts to send down to secure the loans, and in December, 1905, I objected to the running of the company in that way, and I told them I would resign, which I did in February, 1906.

- 4 Q. And what office did you resign in February, 1906? A. First vice-president.

Q. You had occupied that office during all the years to which you have just testified? A. I was treasurer the most of the time, but we had brought into the company a new man, and he was made treasurer at my suggestion, so as to give him an official position.

Q. And you were the active manager of the affairs? A. Yes, sir.

Q. During that period? A. Yes, sir.

Q. Did you continue as a stockholder? A. Yes, sir. 1

Q. After your resignation? A. Yes, sir.

Q. And did you keep in touch with the financial affairs of the company after you ceased to be a director? A. I attended the annual meetings, and at the annual meeting after I resigned, in 1907, the company was in the same financial condition as it had been, or was when I left it. And in the Summer of that year the secretary of the company, Mr. Lamonte, came to my office and asked me if I could not raise the capital to take over the control of the company. I told him that I might, but that I did not care to make the proposition, that he could sound the people that controlled the company, and see if they were disposed to consider it. He did so, and subsequently advised me that they would not consider any turning over of control to me. Then, in 1907, the Fall of 1907, I think, in October, the Ansco Company was organized, and they took over the assets of the Anthony & Scoville Company. 2

Q. Including the Latham loop patent? A. Including the stock of the E. & H. T. Anthony Company. The stock of the E. & H. T. Anthony Company really controlled the Latham patent, because the title was in the Anthony Company's name, but the whole thing went over at the time of consolidation as an asset. 3

Q. Do you recall that at that annual stockholders' meeting in 1907, a financial statement was read to the stockholders, showing the financial condition of the company then? A. Yes, sir.

Q. What did that statement show with respect to the resources of the company? A. It was in the same financial condition.

Q. How much of a balance do you recall they had at that time in cash? A. They were owing the banks— 4

Q. But how much cash balance did they have at that time in the treasury? A. Very little, but in 1908, when I attended the first meeting of the Ansco Company, the successor of the Anthony & Scoville Company, a financial statement was submitted there, and the cash balance was less than a thousand dollars.

Q. Did the committee of bankers permit your company to institute suits to enforce its rights under the Latham loop patent? A. No.

1 Q. They refused you that right? A. The matter was never brought up. They had objected to our other litigations, and had notified me to be very economical in the prosecution of them; in fact, to let them drag along, as they expressed themselves, so as not to have to pay much out.

2 Q. Mr. Anthony, was there ever a time during your connection with the Anthony & Scoville Company between the date of its formation in 1901, and up to the time you left it in 1906, when it was financially able to prosecute any infringement suit on the Latham loop patent? A. No, we were not financially able to carry on an aggressive suit. Besides that, I was in charge of the litigation, and I had the two suits, the Goodwin and the Turner, and was also charged with the financing of the factory.

 Q. Was the use to which the Latham patent was adapted germane to the business at that time conducted by the Anthony & Scoville Company? A. No; we were not in the moving picture business, and it was not a large business at that time, but the manufacturing of film, paper, and cameras was very essential to our business.

3 Cross examination by Mr. GROSVENOR:

 Q. Mr. Anthony, you never did bring a suit on the Latham patent, did you? A. No.

 Q. You didn't have anything to do with the Latham patent after your separation from your company in 1906 or 1907 and down to the sale of the patent to the Biograph Company? A. No.

 Q. You didn't have any dealings then with the officials of the Biograph Company who bought the patent in the Spring of 1908? A. I did not.

4 Q. Did you testify on direct examination that you sent notices to the Mutoscope Company, being the original name of the Biograph Company, and to the Edison Company, that they were infringing the Latham patent? A. That is my recollection.

 Q. Is it your understanding or knowledge that the patent was infringed by those two companies in the period from 1902 down to 1908? A. We were advised that they infringed it.

 Q. Well, what caused a change of heart, which resulted in their purchasing the patent, do you know?

Mr. CALDWELL: Objected to as entirely irrelevant, 1
and incompetent, calling upon the witness to guess
at the mental state or operations of a third person.

The Witness: I had nothing to do with the negotiations.
I don't know when they were started, or anything about
them.

By Mr. GROSVENOR:

Q. Your company was primarily in the photograph busi- 2
ness, was it not, and by that I mean the making of photo-
graphic supplies? A. Yes.

Q. Did you ever make a study of the motion picture
camera, or the projecting machine? A. Well, I don't know
that you would call it a study, exactly. I was familiar with
the machine we made at that time.

Q. What was the name of that machine that you sold?
A. We called it a Biopticon.

Q. And did you use in that machine the same type of film
that is used in other projecting machines? A. It was wider,
as I remember, at that time than that which is used today.

Q. But it was a translucent transparent strip? A. The 3
same kind.

Thereupon, THOMAS W. STEPHENS, the next witness
produced by the defendants, of lawful age, being first duly
sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. What business are you engaged in, Mr. Stephens? A. 4
Well, I don't know just how to answer that. I am in a
number of businesses. I am a banker, primarily, and I am
President of the Ansco Company.

Q. And banking, is it your principal business? A. Yes,
sir; it has been in my career.

Q. What is the name of your house? A. T. W. Stephens
Company.

Q. And where are their offices? A. No. 2 Wall Street,
New York.

Q. And how long have you been in that business? A.
That firm has been in existence since 1902, May 1st.

1 Q. Do you know Mr. Anthony, who has just testified here?
A. I do.

Q. Did you ever have any connection with the corporation of E. & H. T. Anthony? A. No.

Q. Or with the corporation known as Anthony & Scoville Company? A. Yes, sir.

Q. Which succeeded E. & H. T. Anthony Company? A. Yes, sir; I was a director of that company at its formation.

Q. And when was that? A. In 1901 or 1902.

Q. And how long did you remain a director of that company? A. I guess I am, yet.

2 Q. Well, did you participate in the reorganization of the Anthony-Scoville Company? A. I did.

Q. And that company was reorganized when? A. In 1907.

Q. Under what name? A. The Ansco Company.

Q. Then, the Ansco Company succeeded to all the assets of the Anthony-Scoville Company? A. It did.

Q. And what connection did you then have with the Ansco Company? A. President.

Q. Are you still the President of that company? A. I am.

3 Q. What office did you occupy in the Anthony-Scoville Company, other than that of a Director, from the time of its organization up to the time of its reorganization? A. I first became acting President, and then President.

Q. Now, when did you become acting President? A. I should think that was in 1904 or 1905.

Q. And then you became its President? A. I think I was President during the last years of its active existence, for a year and a half or two years.

4 Q. Were you familiar with the financial condition of that company? A. Yes, quite so.

Q. Commencing with the year 1904, when it was first organized, or 1902, and coming on down to the time of its reorganization in 1907, will you state generally what its financial condition was? A. Not good.

Q. Well? A. Poor.

Q. Well? A. It didn't have enough working capital, that was its trouble. It put too much money in brick and mortar at the outset—had to do it in order to prepare itself to handle a general line, which resulted in cramping itself for working capital.

Q. To what extent were the resources of that company devoted to the patent litigation with the Eastman Company? A. You mean the expenses of the litigation? 1

Q. I refer, now, to the two suits just testified to by Mr. Anthony, the first suit of the Goodwin Company against the Eastman Company, for infringement of the Goodwin patent, and second, the suit brought by the Eastman Company against the Goodwin Company for alleged infringement of the Turner patent? A. Do you mean the expenses of those suits?

Q. Yes, in those lawsuits? A. A great many thousands of dollars, perhaps a minimum of a hundred thousand dollars. 2

Q. And what was the capital of the Anthony & Scoville Company at that time? A. A good deal, rather large on paper.

Q. But the actual capital, not the paper capital? A. I should say their inventory at that time would, perhaps, amount to four hundred thousand dollars.

Q. Were you connected with the company when it got into financial difficulties in 1903? A. I was a Director, yes.

Q. Will you state what you know of the arrangement that was made with the banks for carrying the company? A. Yes, its debts to the banks were funded into what were known as "serial gold notes" extending over a period of years, a certain number being redeemable at stated periods. 3

Q. Was it able to meet those notes as they fell due? A. It was not.

Q. State what you know about the appointment of a committee of banks to supervise the fiscal affairs of this company?

Mr. GROSVENOR: I make the same objections to all of this testimony as has been made to the testimony of the witness, Mr. Anthony, on the same subject. It is entirely immaterial to any issue in this case. 4

The Witness: As is customary when a corporation gets into financial difficulties, its creditors, usually banks, are most apt when asked to either grant an extension, or to increase its accommodation, to place accountants, expert accountants, in charge of the business, and in this case there was no exception to that rule. Such a firm was placed in

1 charge of the business, and after a reasonable time the firm of accountants, evidently believing that the business could be resuscitated, recommended to the banks that their present loans be extended, and that an additional amount be granted them. Two of the banks were not willing, and their interest was taken over by the others, and that extension was granted. That did not prove to be effective, which is shown by the fact that on the first of October, 1907, it became necessary to very drastically reorganize the company.

2 Q. Did that committee insist on all checks or notes that were drawn or issued being countersigned by the representative of the committee? A. Yes, sir.

Q. Did they inquire into the purpose of every expenditure? A. Every item.

Q. Do you know whether or not they objected to the expending of any money in patent litigations? A. I do, because I was one of the objectors.

Q. You were one of the committee of the bankers who were interested in making advances to the company? A. Not at the outset, but on the retirement of two banks, I became one of the committee of three.

3 Q. Were you, as one of that committee, willing to allow the Anthony & Scoville Company to expend any of its money or resources for the prosecution of a suit for infringement under the Latham patent? A. We were not.

Mr. GROSVENOR: Objected to as leading, and furthermore, immaterial, and furthermore, there is no proof that they ever contemplated bringing any suit on that patent, or that this witness had ever heard of the patent.

4 By Mr. CALDWELL:

Q. What was the attitude of that committee toward the prosecution of any litigation in addition to that already being prosecuted? A. Embraced in the ideas of economy of that committee was not alone this suit, but every other conceivable method of reducing expenses; reducing the overhead expenses, to bring the overhead expenses down, and try to cut it down in every conceivable way.

Q. Did the committee at one time want to discontinue the litigation under the Goodwin patent? A. Yes, sir.

Q. And under the Turner patent? A. Yes, sir. 1

Q. And why were those two litigations continued, in spite of the remonstrances of the committee? A. It was essential to conclude those suits, because the possession of a film was an essential to the conduct of the business of the company. To give it a full line, so they could start a dealer. The Eastman Company controlled their dealers, and would not allow their dealers to carry any of our products.

Q. Was there ever a time, between 1901 and 1908, when the Anthony & Scoville Company, or its successor, the Anseo Company, was financially able to prosecute a suit for infringement of the Latham Loop patent? A. I should say no, unqualifiedly. 2

Q. Did you have anything to do with the negotiations leading up to the sale of the Latham Loop patent? A. I had all to do with it from our side.

Q. State what efforts you made to dispose of that patent. A. It was a part of our program to dispose of anything we could dispose of that we had, in order to replenish our treasury, to anyone that was inclined to buy. I negotiated with Mr. Dyer, of the Edison Company, and with Mr. Kennedy, of the Biograph Company, and I was very much more anxious to sell this patent than I would admit to either one of those gentlemen. I wanted the money very badly, and it resulted in a sale to the Biograph Company, although I had expected at the outset that the sale would be made to the Edison Company, because they showed more interest in it. 3

Q. And the sale was finally consummated with the Biograph Company? A. Yes, sir, it was finally sold to the Biograph Company.

Q. At about what time? A. I cannot remember the month, but I think it was in 1908. 4

Cross examination by Mr. GROSVENOR:

Q. Mr. Stephens, when was it that you had these negotiations with Mr. Marvin? A. I never negotiated with Mr. Marvin.

Q. Mr. Kennedy, was it? A. Yes, Mr. Kennedy.

Q. Did you have any knowledge as to whether or not the patent had been infringed by these gentlemen? A.

1 Only by hearsay, from talk in the company. I never had been very active at that time—I really—well, shortly after I became a director of the company, Mr. Anthony, or Mr. Scoville, stated to the directors that a conference had been held with the representative of the then American Mutoscope & Biograph Company, and then with the Edison Company, but it didn't amount to much with me at that time, as I had no knowledge of the cinematograph business then. That was in 1904, or 1903, perhaps.

Q. And that conference was in regard to the sale of this Latham patent? A. I don't know whether it was relating
2 to the sale, or getting together in some way to make use of it. It was not akin to our business, and it didn't interest me, and I picked it up as any other asset, to get rid of

Q. When did Mr. Kennedy come to you in connection with this purchase? A. I think I approached him; I don't think he came to me.

Q. When did you approach him about it? A. Those negotiations didn't last long—that was in the spring of 1908—well, it must have been shortly after the organization of the Ansco Company, for my effort was to convert
into cash everything that I could.

Q. You stated that the negotiations with Mr. Kennedy did not last long. They began about the time that the evidence shows that transaction was actually started? A. It may have covered several weeks, because I saw the two men; I had a talk with Dyer, and I had a talk with Kennedy. I remember that Dyer made a bid for it in a laughing way on the golf links at Montclair, saying: "We will pay for the patent what it cost you." I didn't know at that time what it had cost us, for I didn't have any occasion to look it up, and that was way back in some old records.
4

Q. When was this? A. That must have been in the Fall of 1907.

Thereupon, JAMES STUART BLACKTON resumed the stand.

Cross examination by Mr. GROSVENOR:

Q. Mr. Blackton, you produced yesterday, on your return for further direct examination, a copy of an injunction

issued, or dated, September 18th, 1900; do you recall that? 1
A. Yes, sir.

Q. That injunction was issued in this district, was it not? A. Yes, sir.

Q. That injunction was issued before the decision of Judge Wallace, in 1902, holding, in the Circuit Court of Appeals, in the same district, that the Patent No. 589,168, upon which this injunction which you produced was issued, was invalid? A. Yes, sir.

Q. Therefore, it is a fact, is it not, that in the years ensuing, from 1902 up to 1908, you were manufacturing and selling these motion picture films? A. Yes, sir. 2

Q. You attended the meeting on December 18th, 1908, at which the several agreements with the Patents Company and the various licensed manufacturers were executed? A. I did.

Q. You didn't have in mind at that meeting this injunction which you produced yesterday, and which had been issued eight years ago, did you? A. Yes, I did.

Q. Did the issuance of this injunction eight years ago, and which had subsequently been superseded by the opinion of the Circuit Court of Appeals, a higher court, have any effect upon you in entering into the agreement on December 18th, 1908? A. It certainly did. 3

Q. In what respect? A. Because we were promptly sued after 1902 by the Edison Company, and when a man has been burned once he remembers it again.

Q. What was the name of the suit in which you were sued after 1902? A. I don't know the name of it. It was a suit on the reissued camera and film patent. I don't remember the number.

Q. When was that suit brought? A. I think it was brought subsequent to 1902, I think, I cannot remember the date. 4

Q. That is a long period of years, from 1902 to 1908. Can you tell me approximately when it was brought? A. I can't remember. It might have been in 1904.

Q. Where was it brought? A. In this district.

Q. Who were your attorneys? A. I think, Kerr, Page & Cooper.

Q. Did you testify in the suit? A. No.

Q. Did Smith testify in the suit? A. I don't remember.

1 Q. Did any member of the Vitagraph Company testify in that suit? A. I couldn't say.

Q. Was there any testimony taken in the suit? A. Yes; I think so.

Q. Well, do you know? A. No; I am not positive.

Q. Do you know whether or not, as a matter of fact, such a suit was ever brought? A. Yes; I am sure of it.

Q. I will ask you to please produce a copy of the petition in that suit or of the complaint filed against you? A. Well.

2 Q. Mr. Blackton, you stated on your direct examination that there were two injunctions issued against you. When was the other injunction? A. I think the other injunction was in 1898 or 1899.

Q. And that was ten years before the formation of the Patents Company? A. I believe so.

3 Q. Did that injunction, the fact of that injunction having been issued, affect you, or come to your mind ten years later, when you signed this agreement on December 18th, 1908? A. Well, I naturally remembered it. We had been twice up under an injunction. We had been brought up in contempt proceedings, and, I think, had been fined two hundred and fifty dollars, and had been warned if we infringed again we would be in danger of further punishment.

Q. Isn't it a fact, Mr. Blackton, that this injunction you violated, and which you have referred to, was back in 1902, six years before or prior to the formation of the Patents Company? A. Yes.

4 Q. That they were both of them prior to Judge Wallace's opinion in the Circuit Court of Appeals, which held that that patent was bad? A. The injunctions were previous to that, yes, but we were subsequently sued again after both of those injunctions, and that suit was pending at the time of the formation of the Edison License Agreement.

Q. Other than that suit which you have just referred to, was there any litigation pending between the Vitagraph Company and the Edison Company in 1908? A. Not other than that one, no. One is quite enough.

Q. And you say you had not testified in that suit, and no one of your company, so far as you know, had testified in that suit?

Mr. KINGSLEY: I object to that question. The witness has not so stated.

The Witness: No, I am not positive that I did not testify. I say that I don't remember now. It is a long time ago. I testified in so many suits that I cannot remember now, and I have not refreshed my memory at all. 1

By Mr. GROSVENOR:

Q. You have not refreshed your memory before testifying on direct examination by reference to any of the records in connection with this litigation? A. None whatever. I did not even see the copies of those injunctions which were sent up here to Mr. Kingsley. My partner, Mr. Smith, got them out of his desk and sent them up here. 2

Q. Where did you get this letter that you introduced, from Kerr, Page & Cooper? A. That was sent up here by Mr. Smith with the other papers.

Q. Where did he get it? A. From our New York office, out of his files.

Q. The Mr. Smith who testified was your partner throughout that period from 1901 down to 1908, wasn't he? A. Yes.

Q. You produced a letter from the Armat Company yesterday, dated November 27th, 1902, which defendants introduced in evidence as Exhibit No. 119. Was any suit brought against you by the Armat Company subsequent to that letter? A. Yes; I believe so. 3

Q. Where was that suit brought? A. I am not sure whether it was in this district or in Washington.

Q. Are you sure that any such suit was brought? A. My recollection is that a suit was brought by Armat.

Q. Where was the suit brought? A. I just stated I don't know whether it was here or in Washington. We were exhibiting in Chase's Theatre, in Washington, at that time, and our attorneys in that case were Church & Church, of Washington. 4

Q. When was it brought? A. Possibly in 1902 or 1903. I could not say now.

Q. What was the issue in that suit? A. That was on the so-called Armat patent, which made as its chief claim the longer period of rest than period of motion.

Q. That is, it related to the shutter? A. No. It related to the film remaining still longer than the period of movement.

1 Q. Did you testify in that suit? A. I believe I did.

Q. What was the result in that suit? A. I don't think it ever came to a head. The matters pertaining to it were all closed up when the Patents Company was formed in 1908.

Q. That is, you say the suit was started about 1902 and dragged along until 1908. Is that correct? A. I am not quite positive. To the best of my knowledge, it was.

2 Q. Did you talk with Mr. Church or with any of your attorneys as to the exact facts attending that suit, before testifying here? A. Yes. I made a trip to Washington and saw Mr. Church.

Mr. KINGSLEY: When was this trip to Washington?

The Witness: 1902 or 1903, I should say.

Mr. KINGSLEY: The question, as I understand, was, before testifying here, had you talked to Mr. Church?

3 The Witness: Oh, no. No.

By Mr. GROSVENOR:

Q. Before testifying on direct examination in regard to this litigation, did you consult with any of your attorneys on the subject of the litigation? A. No.

Q. You did not attempt to refresh your recollection as to the suits? A. No.

4 Q. Are you sure that there was a suit brought against you by the Armat Company? A. Yes, I am—I feel quite positive there was. I know that we were harassed very much by the Armat Company. They wrote not only to us, but to all our customers, threatening them with a suit if they persisted in using our machines.

Q. And this was in 1902? A. Yes.

Q. But you had gone on using your machines for six years after that time up to the formation of the Patents Company, hadn't you? A. Well, not without any change. Mr. Smith, who is the mechanical man of our firm, evolved a shutter which is known as a fifty per cent. shutter, which

allowed only the same amount of exposure on the screen as the amount of rest or of interruption, and we used that shutter for a number of years on all our machines. It gave a very poor exhibition, and because the shutter was half and half, it gave a considerable amount of flicker. More than the average shutter. 1

Q. What shutter do you use now? A. Now, a three-wing shutter is used, which splits the light up into three parts.

Q. Does most everybody use the three-winged shutter today? A. I really don't know, Mr. Grosvenor.

Q. Other than this suit brought by the Armat Company in 1902, had any other suit been brought against you by the Armat Company? A. Up to that period? 2

Q. Up to 1908? A. Yes.

Q. What other suit? A. We were sued by the—I think, between 1907 and 1908 we were sued by the Biograph and Mutoscope Company.

Q. You misunderstood my question. I said between 1902, when this suit was brought in the District of Columbia, you say, by the Armat Company, up to the time of the formation of the Patents Company, had any other suit been brought by the Armat Company against you? A. No, I think not. 3

Q. The Biograph Company suit was brought after the formation of the Edison licensees, was it not? A. Yes.

Q. And that suit was brought on the Latham patent, wasn't it? A. Yes.

Q. Was there any other patent upon which the Biograph Company sued you? A. I don't remember whether they utilized the Armat patent in their suit or not. Armat had at that time joined forces with the Biograph Company.

Q. Have you refreshed your recollection on that matter by consulting your records or talking with your attorneys? A. No, I have not. 4

Q. The Armat and Biograph companies are separate companies, are they not? A. Yes. I believe so.

Q. Then isn't it true that the only suit the Biograph Company brought against you was on the Latham patent? A. I am not sure.

Q. Had you used a loop on your projecting machine? A. Yes.

1 Q. You always had, hadn't you? A. No.

Q. When did you start using a loop? A. I should say about 1900.

Q. Then you had used a loop on your projecting machine for at least eight years prior to the formation of the Patents Company? A. Yes.

Q. And for two years before the Latham patent was issued? A. When was the Latham patent issued?

Q. In 1902. A. We probably had.

2 Q. Did you ever see a projecting machine from 1902 down to 1908 which did not have a loop? A. I did not see many machines but our own. None of our own were constructed without a loop.

Q. Did you ever see any projecting machines of any other manufacturer in that time in any theatres or anywhere? A. No, I don't think I did. I had very little to do with that end of our business.

Q. What camera were you using in the years from 1902 down to 1908? A. We used a number of cameras, the Warwick, the Urban, Preswich, the Hepworth, Pathe, and cameras that we built ourselves.

3 Q. And did all of these cameras from 1900 down to 1908 have loops on them? A. Not all.

Q. Did they from 1902 down? A. Not all.

Q. Which ones did? A. The Warwick camera, our own, and a Demeney camera which we used for a number of years, all had loops.

Q. Did the Pathe camera have a loop? A. No.

4 Q. Were these all the cameras that you used in the three or four years preceding the formation of the Patents Company in 1908? A. No. We used all of the cameras that I previously named, at the time. I might say that we were fully aware of the Latham patent, and we felt at all times that we were infringing and in danger of suit, because the Latham patent, to our mind, was the strongest patent of any of the then existing patents.

Q. You considered it a stronger patent than the film patent, did you? A. The film patent had not been adjudicated.

Q. You considered the Latham patent a stronger patent than the film patent? A. Well, if the film patent had been sustained, it would have been the strongest of all. Natu-

rally, that was the base. Without the film patent, or without film, we could not have taken pictures at all. 1

Q. But the film patent was not sustained, was it? A. No.

Q. And, therefore, you considered the Latham patent stronger? A. I consider the Latham patent a very strong patent today.

Q. Now, Kleine was agent for the Edison Company in 1907, wasn't he? A. Yes.

Q. And he was, at the same time, importing a lot of foreign films, wasn't he? A. Yes. He was paying royalty to Edison, I believe, at that time on those films. 2

Q. What time are you referring to? A. 1907.

Q. Were commercial conditions satisfactory in the Fall of 1907? A. No.

Q. Were you present at the various meetings of the rental exchanges, in November, 1907, and then in the early part of 1908, which resulted in the formation of the Film Service Association? A. Yes, I attended some of them; not all.

Q. The Vitagraph Company was interested in the formation of that association, being itself interested in the rental exchange business; isn't that true? A. To a very small extent. We were at that time devoting our attention more largely to the manufacture of the film itself. 3

Q. And one of the purposes of the formation of the Film Service Association was to improve commercial conditions; isn't that correct? A. Yes.

Q. And the means adopted were the so-called exchange license agreements executed by the Edison licensees with the rental exchanges? A. Yes.

Q. And wasn't it one of the purposes in the formation of the so-called Edison licensees to also improve the commercial conditions? A. Yes. 4

Q. Those agreements dated January 31st, 1908, between the Edison Company and the several Edison licensees, and by Edison licensees, I mean the manufacturers, were all executed about the same time, were they not? A. Yes.

Q. And the negotiations which resulted in their execution contemplated their execution simultaneously by these manufacturers to the Edison Company? Is that question clear? A. Not quite. The latter part is a little ambiguous.

1 Q. You participated in several conferences which resulted in those Edison license agreements? A. In some of them, yes.

Q. I think you testified that you saw Kleine in Chicago, and also Spoor and Selig at that time. A. I did.

Q. And then, later, you saw some of the others in the East? A. Yes.

2 Q. At these several meetings all the parties there present planned that they should all go in together at the same time, as was finally done; is that not correct? A. Not necessarily all at the same time. The men who met together were those who were then being sued by the Edison Company, and they met with a view to trying to ameliorate the condition that existed at that time.

Q. And the way of ameliorating these conditions was for them all to execute agreements simultaneously, and to put into effect this new arrangement? A. Not at all.

Q. That is what they did, didn't they? A. The aim was to become licensees of Edison. Whether simultaneously or not, was of no interest to us. We had no interest in the others, except a mutual interest of protection.

3 Q. Then why didn't you execute an agreement with the Edison Company, regardless of the others, if you felt that their actions had no effect upon your actions, and in that way get rid of this litigation that you were complaining of? A. One of our reasons was that Kleine was at that time our agent in Chicago, and doing quite a large business for us, and we gave him some consideration on that account, and it was for that reason that I called on Mr. Kleine and talked the matter over.

4 Q. I understood you to testify on direct examination that Kleine was an agent for the Edison Company. A. Yes. An agent for the Vitagraph Company, also.

Q. Now, isn't it a fact that one of the requisites, in order to improve the commercial conditions, was that all of the manufacturers should go in together? A. I don't see it that way at all.

Q. That is what they did do, didn't they? A. They did it, yes.

Q. And did commercial conditions improve? A. Yes, very materially.

Q. And isn't the fact that the prices on films; that is, the

prices from the manufacturer to the rental exchange, were advanced, and stayed advanced a short period, until the competition became violent between the Edison licensees and Kleine and the Biograph Company? A. I don't know about the others. Our prices did not advance. I believe our prices were lower after that than they had been before. We used to get fifteen cents a foot for our films, and I believe the price that we got after the Edison license agreement was twelve cents, less ten.

Mr. KINGSLEY: Less ten per cent?

The Witness: Less ten per cent.

By Mr. GROSVENOR:

Q. Mr. Blackton, you attended various meetings of the Board of Directors of the General Film Company in 1910, did you not? A. Very few. I was not a member of the Board, and none but Directors were supposed to attend. Occasionally, I would go there.

Q. I show you the minutes of a meeting held November 10th, 1910, being printed in the record, Volume I, page 271, said minutes stating that you were present, and I ask you to read those minutes and see if they refresh your recollection as to your being there? A. Yes, I was present at that meeting.

Q. It was customary, was it not, to read the minutes of what had been done at the previous meeting? A. I believe so.

Q. These minutes which I have just shown to you state that the minutes of the previous meeting were read, and, on motion duly seconded, were approved as read. Now, I direct your attention to the minutes of the previous meeting, being the meeting of October 11th, 1910, printed in the record, Volume I, page 266. Please read those minutes, and see if they refresh your recollection as to the fact of their being read at the meeting? A. Yes, I presume they were read. It so states there.

Q. These minutes of the meeting of October 11th, 1910, state that Mr. Kennedy reported, on behalf of the Executive Committee, that the company had purchased thirty-nine exchanges, and made the following detailed report of conditions as of October 10th, 1910, and so forth. "Total pay-

1 ments authorized for all exchanges in entire country, stock, \$988,800; cash, \$2,480,000." Do you recall any discussion being had at that meeting in connection with this report? A. No, I do not recall anything now.

Q. Have you any recollection when, if ever, the authority referred to in these minutes was given, authorizing the expenditure of the amounts in stock and cash there named, for acquiring all the exchanges in the entire country? A. No, I do not. I had absolutely nothing to do with the business of the General Film Company.

2 Q. Were you advised as to its purposes when formed? A. Yes.

Q. I show you a letter addressed by Mr. Kennedy to William Pelzer, January 23rd, 1912, printed in the record at page 251. This letter states, "Some time before the General Film Company was organized, an estimate of the value of the business of exchanges leasing licensed motion pictures was made by men familiar with the manufacture of motion pictures and also with the business of exchanges. According to this estimate, the value of said business was \$3,468,847." Have you any knowledge as to who made that estimate? A. No, I have not.

3 Q. Did you have any knowledge at the time it was made? A. No, I think not. At that time, I was devoting almost my entire time to the production of our films.

Q. Who would know? A. I could not tell.

Q. You do not have any idea what officers or persons connected with the General Film Company would know who made that estimate? A. I should think that Mr. Kennedy himself made it, or caused it to be made.

Q. Did the Vitagraph Company of America assign all of its patents to the Patents Company? A. Yes.

4 Q. Mr. Blackton, have you named on your direct examination and your cross examination, all suits brought against you upon any of the patents in the period from 1900 down to 1908? A. I believe so.

Mr. GROSVENOR: That will end the cross examination. I reserve the right, however, to recall this witness to produce the several papers which I asked him to produce, in order to complete the proper cross examination on matters testified to by him on direct examination.

Mr. KINGSLEY: What are those papers? 1

Mr. GROSVENOR: That was the second injunction, which was not produced, being issued in 1902, according to your testimony, Mr. Blackton; the pleadings in this suit in Washington in 1902, brought by the Armat Company—

The Witness: I think you are in error about the injunction in 1902, Mr. Grosvenor. I testified there were two injunctions to my remembrance, one in about 1898 or 1899, and the other in 1900.

Mr. GROSVENOR: Yes. That was my mistake. 2
You did say 1898, as I now recall.

The Witness: That first was an injunction against Blackton and Smith. I believe that was sent up, Mr. Kingsley, with the other papers.

Mr. GROSVENOR: Then the petition or complaint in the suit brought by the Biograph Company in 1908, in order to establish the exact date of the bringing of this suit. Also copy of the evidence taken, or statements showing the amount of evidence taken in the suit brought by the Edison Company in 1904 or 1905, on one of the patents. I do not know which it related to. 3

The Witness: The reissued camera patent.

Mr. GROSVENOR: Those were the only suits, as I understand, that were brought against you?

The Witness: Yes.

J. A. SCHUCHERT, recalled for cross examination, testified as follows:

Cross examination by Mr. GROSVENOR:

Q. Mr. Schuchert, when did you start in the motion picture business? A. In 1907.

Q. As I understand your direct examination, you started with a shoe string, that is, practically nothing, and gradu-

1 ally built up a successful and profitable business? A. Yes.

Q. So that your business was increasingly profitable from the time you started it, down to the formation of a competitor named the Motion Picture Supply Company that did business in Rochester? A. Yes, sir.

Q. And that company began doing business some time in 1909? A. As an independent, 1909.

Q. And when did it become a licensed exchange. A. About January, 1910.

2 Q. And, then, from January, 1910, down to July, the competition was keen between your company and that company, and also the Pittsburgh Calcium Light Company, which was also located in Rochester? A. Yes, sir.

Q. The result of which competition was that you did not make much money in that period of six months? A. Yes, sir.

Q. Then you sold out and on the same day these other two companies sold out to the General Film Company? A. Yes, sir.

3 Q. And after July, 1910, you became the branch manager in control of the Buffalo branch of the General Film Company? A. Yes.

Q. And thereafter the business of that branch again became profitable? A. Yes.

4 Mr. CALDWELL: I object to that question. He has not stated that the business conducted by the branch office of the General Film Company subsequent to July, 1910, had increased in its profits or in the extent of its business. I do not think he testified to that on his direct examination. I think his testimony was directly to the contrary—that their customers had ranged from about 165 to 170.

By Mr. GROSVENOR:

Q. Witness, you understand, as I state these things, you are to correct me if I do not state them accurately. You understand that, don't you? A. Yes, sir.

Q. You also testified on the subject of the formation of the Film Service Association? A. Yes, sir.

Q. You were present at some of the meetings? A. Yes, sir.

Q. And joined the association? A. Yes.

1

Q. And that was an association which the rental exchange joined in an effort to improve commercial conditions? A. Yes.

Q. Your testimony is, on page 2016: "Did you observe any change in conditions after the formation of the Film Service Association? A. Slightly. We got a little better prices for a while, worked together; in fact, our business grew right after that. We bought more film each week." That was in part the object of the formation of the Film Service Association, was it not, to accomplish the results which you have named in your answer? A. Yes. As I understand it.

2

Q. What manufacturers were present at these meetings which resulted in the formation of the Film Service Association? A. To the best of my recollection, at Pittsburgh, I believe, they were nearly all represented.

Q. Was the Pittsburgh meeting the meeting in January or February, 1908, or was that the one in November? A. That was the one in November.

Q. Did not a number of those manufacturers, for instance, Mr. Marvin, make speeches to the rental exchange men? A. There was a speech made at a banquet which was held there in the evening.

3

Q. Among the subjects discussed were the elimination of duping, and the bettering of prices? A. I cannot just recall the speech. I know it was to better the conditions generally.

Q. The general plan which was started at the November meeting, was consummated in the February meeting, when the exchange agreements were signed up, is that right? A. Yes.

Q. As a member of the Film Service Association, I suppose you handled thereafter in 1908, the films of the Edison licensees to the exclusion of the films made by Kleine and the Biograph companies? A. Yes.

4

Q. With whom did you have dealings in the selling out of your exchange? A. Mr. Kennedy and Mr. Waters.

Q. How did you happen to meet them? A. Mr. Waters telephoned to me at Buffalo, and I came down several days later.

Q. He asked you to come down to New York? A. Yes, sir.

1 Q. What did he say on the telephone? A. He said he wanted me to come down in reference to the General Film Company.

Q. On the subject of selling your business? A. Selling my business to the General Film Company.

Q. What did you say? A. I said: "All right; I will be down."

Q. And then, when you came down, where did you go? A. To No. 10 Fifth Avenue.

2 Q. Was that the offices of the Motion Picture Patents Company? A. My recollection is that was the office; I cannot say it was the office of the Patents Company. I think it was the old Edison office, as I recollect it.

Q. Whom did you see there? A. Mr. Kennedy and Mr. Waters.

Q. What did they say? A. We went into the room where Mr. Kennedy was. He made a proposition to us—

Q. Did he bring out some papers? A. He had a lot of papers on his desk.

3 Q. Did he look over them, and then tell you what he would give you? A. Yes, he looked over some papers—over his papers during his conversation with us.

Q. Did he show you the papers? A. No.

Q. Was there a list of exchanges on these papers, do you know? A. I could not say. I did not see them.

Q. What did he offer you? A. He offered us for the Buffalo and Rochester branch, \$63,000.

Q. In cash and preferred stock? A. Preferred stock and deferred cash, yes.

Q. You took what he offered? A. We took what he offered us, yes.

4 Q. You knew that the General Film Company had purchased other companies at that time; that is, other rental exchanges? A. I did.

Q. Was anything said by Mr. Kennedy as to the number of exchanges to be acquired by the General Film Company? A. I don't remember of any conversation of that kind.

Q. Was anything said about the General Film Company acquiring all the licensed rental exchanges? A. I cannot say that I heard him say that.

Q. Didn't Mr. Waters say something about acquiring all the rental exchanges? A. I cannot say that he did.

Q. These cash payments ran over a period of five years from July, 1910? A. Yes. 1

Q. Did you get interest on those deferred payments? A. Yes.

Q. Then, when the General Film Company acquired those three exchanges on that day—

Mr. CALDWELL: Those two exchanges. He has only testified to two.

Mr. GROSVENOR: He has testified to three.

Mr. CALDWELL: Rochester and Buffalo. 2

Mr. GROSVENOR: He has given the Pittsburgh Calcium Light, the Buffalo Film Exchange, and the Motion Picture Supply Company. 2

Mr. CALDWELL: He had no interest in the Pittsburgh exchange.

By Mr. GROSVENOR:

Q. Those three were all acquired on the same day?

A. The Buffalo and the Rochester branch of the Pittsburgh Calcium, the Motion Picture Supply Company being the last, which I had no interest in. 3

Q. Those three were acquired on the same day? A. One day.

Mr. CALDWELL: But not part of the same deal.

The Witness: No, sir.

By Mr. GROSVENOR:

Q. Did the motion picture exchange man come down with you? A. He was in the office at No. 10 Fifth Avenue in the morning, when we got there. 4

Q. Did he leave before the subject of buying you up was taken up? A. We went into Mr. Kennedy's office and made our deal, and came down and went away.

Q. Leaving him there? A. Leaving him there.

Q. You subsequently learned that his company was purchased, too? A. Yes.

Q. Well, as a result, the General Film Company acquired on that day all the licensed exchanges at Buffalo and at Rochester? A. Yes, sir.

1 Q. And those comprised all the licensed exchanges with which you had been in competition? A. Well, not all of them. We met competition from Cleveland and from Pittsburgh, although those were not as strong competitors of ours.

Q. Those exchanges in Cleveland and Pittsburgh handling licensed film were also acquired by the General Film Company subsequently? A. They were bought later, I believe. I cannot state that they were, but I think they were.

2 Q. Do you have any competition in your territory today in the sale of the films of these ten licensed manufacturers? A. Yes, sir.

Q. From whom do you have that competition? A. The Greater New York.

Q. The Greater New York Film Rental Company? A. Yes, sir.

3 Q. Is there any other company that distributes licensed film in your territory that competes with you; that is, any company besides the Greater New York Film Rental Company? A. Well, our own company, the General Film Company. We sometimes get in competition with our Albany and Wilkes-Barre branch. They sometimes give us competition by taking on a customer in the same town we do.

Q. You are now referring to competition with yourself? A. With ourselves.

Q. Then there is not any company, other than the Greater New York Film Rental Company, which competes with you in the distribution of licensed film? A. No, sir.

4 Q. You testified on direct examination, page 2032: "And throughout your territory, would you say that the theatres supplied by the General Film Company, in point of capacity and accommodations, are any superior to those that are supplied by the independents? A. I would say they have just as good theatres as we have. I believe we have more of them, but I would say that they supply just as good theatres as we do." Then: "Mr. Grosvenor: You have more of the good theatres? The Witness: We have more of them, because we have a larger supply to handle them." Is there anything you want to add to that answer? A. No. Not that I know of.

Q. Is the Warner Special Feature Company a company

that supplies a daily complete service for theatres, or is it a company that supplies special features? A. They supply special features, but can supply three changes a week, giving a man a program on which he can do business. 1

Q. That is, if he changed three times a week? A. Yes, sir.

Q. Do not the majority of your customers change their entire program every day? A. Yes, sir.

Q. Does the Famous Players Film Company supply a complete service for a theatre? A. No, they do not. Unless a man wishes to run the same program an entire week. 2

Q. But the general rule is for a theatre to take their service for a day or two, and then return to the regular service that it may be taking from you, or from one of the other distributing agencies? A. Yes, I find the majority of theatres using their service run it from two days to four. A few exceptions run it an entire week.

Q. Then, the only two companies that furnish a complete service other than yourselves, are the Mutual and the Universal? A. Yes. And the Greater New York.

Q. How many different reels does your branch offer a week? A. We handle from forty-six to forty-seven. It varies between those two. 3

Q. Reels? A. Yes, sir.

Q. Does that include specials? A. We have also the Exclusive Department which handles twelve or thirteen reels per week.

Q. Does the Exclusive Department yet furnish enough reels to constitute the entire program of a theatre? A. Where a theatre wants to change only two or three times a week.

Redirect examination by Mr. CALDWELL:

4

Q. Is it customary in your district, that a theatre using the special feature service of the Warner or other companies change daily, or only twice or three times a week? A. They usually use the Warner in addition to our service.

Q. You have just stated that the Warner Company is able to supply a regular service to a theatre that does not change more than three times a week. A. Yes.

Q. Now, are there many theatres in your district that take a service of that kind and change only three times a

1 week? A. There are about twenty per cent. of our customers change two, three and four times per week.

Mr. GROSVENOR: The eighty per cent. change every day?

The Witness: Yes.

By Mr. CALDWELL:

2 Q. But the Warner Company is able to supply a complete service to a theatre that makes only a change of three times a week; that is correct, is it? A. Yes.

Q. And the character of the service supplied by them is such as to not make it desirable to change oftener than that, isn't it? A. Yes, in order to get the advertising out of their features.

Q. Many of their plays consist of dramas that have at one time or another made more or less reputation upon the legitimate stage? A. Yes.

3 Q. And a single one of those dramas would furnish a whole evening's entertainment, that is correct, isn't it? A. Yes.

Q. Which will take two or three hours to run? A. Not so much with the Warner's. I think their features run three and four reels. The Famous Players, theirs runs six or seven.

Whereupon, at 4:30 P. M., on this Tuesday, December 2nd, 1913, the hearings are adjourned until Wednesday morning, December 3rd, 1913, at 10:30 A. M., at the Hotel Manhattan, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	} No. 889. Sept. Sess., 1912.
v.	
MOTION PICTURE PATENTS Co. and others, Defendants.	} 2

NEW YORK CITY, December 3, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 3, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

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Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

- 1 Thereupon, ABRAHAM GREENBURG, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Greenburg? A. Camden, New Jersey.

Q. In what business are you engaged? A. I am in the exhibiting business, exhibiting motion pictures.

- 2 Q. How long have you been an exhibitor of motion pictures? A. I should judge since about 1904 or 1905, along in there. I don't remember the exact date.

Q. Have you been located during those six years at Camden, New Jersey? A. No. I had a house, previous to the Camden house, at Asbury Park, and one at Chester, Pennsylvania.

Q. What house, or houses, have you in Camden, New Jersey? A. The Grand and the Princess.

Q. What are the seating capacities of those houses? A. One has four hundred seats, and the other seven hundred seats.

- 3 Q. How long have you had the Princess, in Camden? A. The Grand will be two years old this coming March, and the Princess I erected last April.

Q. Do you own any other theatres? A. I have an interest in the Chester house.

Q. How long have you been interested in the Chester house? A. Well, about nine years; between eight and nine years.

Q. Since 1907 have you been continuously engaged in the business of exhibiting motion pictures? A. I have.

- 4 Q. During that time have you been familiar with the prices of the motion picture service? A. Well, that is, with my own. I have not, about anybody else's.

Q. But have you known in a general way about the character of the motion picture service since 1907, supplied by the licensed rental picture exchanges, and the unlicensed rental exchanges? A. Well, I don't know anything any more than about my own.

Q. Are you exhibiting licensed motion pictures in your houses at present? A. Yes, sir.

Q. From what rental exchange are you taking licensed

service for your houses? A. From the Philadelphia Exchange. 1

Q. Is that a branch of the General Film Company?
A. Yes, sir.

Q. How long have you been taking motion pictures from the Philadelphia branch of the General Film Company? A. Since they have been in business.

Q. And before that time from what exchange or exchanges did you secure motion pictures? A. I had taken them from the Electric, at one time from Mr. Cahuff, and from the different exchanges.

Q. Were those exchanges all situated in Philadelphia? 2
A. Yes, in Philadelphia at that time.

Q. At the present time do you have a definite program? A. I have.

Q. Are you able to select and advertise this definite program for some days in advance? A. I am.

Q. Do you so advertise it? A. I do some.

Q. Are you able to produce the program that you advertise on the date designated in the advertisement? A. I have always, so far, except that there is a delay in the express company, or something like that, which could not 3
be avoided.

Q. Do you have any difficulty with respect to keeping your program clear? A. Well, I have kept it clear, but we have had an opponent over there called the Greater New York Film Rental Company.

Q. Does the Greater New York Film Rental Company have a branch office in Philadelphia? A. Yes, sir. They came into Camden last Spring, and competed against my program, and I overcame that by beating them to it.

Q. And by "beating them to it," what do you mean?
A. I got the stuff out ahead of them. They advertised the 4
stuff that I advertised, and I had to go to work and get ahead of them.

Q. You had to get a different service? A. Yes, sir.

Q. And by that you mean that you got earlier runs?
A. Yes, sir.

Q. Did you pay more money for your different service? A. Yes, sir.

Q. So that you met the competition by changing your service, and getting earlier runs? A. Yes, sir, in that way.

1 Q. And you are now paying more money for your service than you did last Spring, before this competition began? A. Well, since I have beat the competition out, I have fallen back to my original program. I am not paying so much as while fighting my competitor.

Q. During the time you were paying for this more costly program did you have any increase of business, or any increase in your audiences? A. No. It seemed to me to remain about the same.

2 Q. Now, how long was this competition to which you have referred going on in Camden? A. He had been doing it for about two weeks.

Q. Did your opponent change his service, or go out of business? A. No, he changed over into the other goods.

Q. What kind of goods did he take? A. He took on what is called the independent service.

Q. That is, he went to showing unlicensed pictures? A. Yes, sir.

Q. Is your opponent still in business? A. Yes, sir.

3 Q. Does he seem to be going right along with the unlicensed pictures? A. Yes, sir. He seems to be doing business right along.

Q. During the period of this acute competition did you have any experience of advertising your program, only to find that your competitor would be able to display the same pictures you advertised a day or two in advance of your receiving them? A. He had been doing it for about two weeks.

Q. Before the formation of the General Film Company, were you able to select and advertise a definite program some days in advance of your exhibitions? A. Well, we used to do it, but we didn't get them always.

4 Q. Did you have difficulty in getting the program that you were going to show? A. Yes, sir, we did in those days.

Q. What were the chief difficulties you encountered in dealing with exchanges at that time? A. I would go and book a show for Wednesday, for instance, and if another fellow would happen to get in there a little earlier, one of the boys would give him the reels which I was supposed to get, which often happened.

Q. You found that your advertising, then, in this way—

A. It was no good at all. I advertised pictures many times, and never got the reels. 1

Q. Considering the character of the service and the requirements of the audiences at the present time, what do you say as to whether the prices of motion picture service have increased or diminished since 1907? A. Proportionately they have increased, that is, considering the better class of goods we get, and the way things are running.

Q. What did you say? A. The better class of goods we are getting. The goods are much better today than they were five or six, or seven years ago. It costs more to produce them, and, of course, we have to pay for them. 2

Q. How many exchanges are running in Camden at the present time? A. None in Camden.

Q. How many exhibitors are there in Camden at the present? A. I think between twenty-four and twenty-seven in Camden.

Q. How many of those houses are independent houses? A. That I do not know.

Q. Do you know of several that are independent? A. Yes, sir; I know of some.

Q. But you cannot give the exact number? A. No. 3

Q. You have told us that you think the quality of the pictures has improved in the last few years? A. Yes, sir; I do.

Q. You were in business in 1907? A. Yes, sir.

Q. Was the quality of the pictures satisfactory in 1907 to the exhibitor? A. During those days, yes; but we could not use the same stuff today.

Q. What do you mean by that? A. I don't think it would be good enough.

Q. Have you felt at any time, or did you feel at any time after the General Film Company went into business, that you were obliged or under any compulsion as an exhibitor to take service from the General Film Company? A. The only way I feared them was if I didn't pay my bills. 4

Q. That was a fear, however, that you would have in connection with any exchange? A. Yes, sir; with anybody. In fact, it is no fear at all. It is a case of paying your bills and you get your goods.

Q. Do you find that the producers of licensed motion pictures are competing among themselves for the favor of the exhibitors? A. I should think so, yes.

1 Q. Do they send you circulars and advertisements of their productions? A. Yes, sir; they do.

Q. Do they advertise in the trade papers? A. Yes, sir.

Q. Do they co-operate with you in advertising their productions? A. Well, they advertise the goods.

Q. Do they supply you with posters? A. We get them through our service.

Q. Do you ever make a special application to the General Film Company for some special features that you wish to show? A. Well, I myself, I do not, because I use every feature they make.

2 Q. You use them all? A. Yes, sir; I use the whole lot.

Q. You use comparatively early-run reels, do you not? A. Yes; comparatively.

Q. Do the representatives of the independent exchanges ever solicit your business? A. Yes, sir.

Q. Do they offer you a complete and definite program? A. They never worry me, because I have never gone as far as to say I would take their stuff. They gave me the prices, which I found compared almost with what I am paying now, and there is not enough in it to justify me to make a change.

3 Q. When you say they gave you prices that compared almost with what you are paying now, you mean by that that the prices they quoted you are substantially the same as you are now paying to the General Film Company? A. They would be before I got through.

Q. Was the price any inducement at all? A. No.

Q. What projecting machines do you use in your houses? A. The Powers.

Q. Have you ever used any other machine but the Powers? A. I never have used anything else but the Powers.

4 Cross examination by Mr. GROSVENOR:

Q. How many years have you used the Powers machine? A. Since I have been in business.

Q. How long is that? A. I should say eight or nine years I have been in the business.

Q. Are special features an important part of the program given by you in your theatres? A. Well, I can't say they are, especially; they come right in with my program during

the week. They are booked in the same way as the ordinary reel. They were not special features to me. 1

Q. Are they an inducement to your customers to come and see the pictures in your theatre? A. I make the inducement for them to come. Yes, it is an inducement.

Q. Are the specials things you advertise more than other pictures? A. Well, ordinarily, yes.

Q. Then you consider the special features of sufficient importance to be advertised more than the other pictures shown in your theatre? A. Because one is a single reel and the other a double reel, and therefore I would have to give the same advertisement I would to a single reel. 2

Q. Don't you give the special features more than double the advertisement you do the single reel? A. I don't use them specially, at all—I use a special feature every day in the week.

Q. How many theatres are there in Camden? A. I judge, between twenty-four and twenty-seven.

Q. How many of those are the so-called licensed theatres? A. That I don't know; I never bothered about that.

Q. Your theatres, or the theatres in which you have been interested since the Motion Picture Patents Company was formed, have been the so-called licensed theatres, that is, theatres showing the output of the licensed manufacturers? A. With the exception of about four weeks, while I was in business, when I didn't show the licensed stuff. 3

Q. Where was it that you used the unlicensed stuff? A. At Chester.

Q. Then, what did you do after the expiration of that four weeks? A. I went back to the licensed stuff.

Q. You found that the licensed stuff was better? A. I thought it was better.

Q. And it was necessary for you, in order that you continue successfully in business at Chester, to have the licensed pictures? A. Yes, sir. 4

Q. And in order to be successful you used the licensed goods? A. Yes, sir. I thought it would be better to have their goods back again. The others were not good enough.

Q. Your business fell off, did it, in those four weeks? A. Yes, sir.

Q. Why did you give up the licensed stuff? A. I want-

1 ed to give the other a trial to see if I could do anything with it.

Q. And that has been the only time you tried to show the independent stuff? A. Yes, sir, the first and the last time.

Q. Are those theatres of yours in Camden, the Grand, and the Princess, among the larger theatres in Camden? A. Yes, sir.

2 Q. About all of the larger theatres in Camden are showing the so-called licensed pictures, are they not? A. The larger houses in Camden?

Q. Yes. A. There is none larger than mine.

Q. You have the two largest, have you? A. Yes, sir.

Q. Please state how many persons each of your two theatres accommodate? A. One will hold four hundred, and the other seven hundred.

Q. How many different reels a day do you show, Mr. Greenburg? A. I show four reels at the Grand, and five at the Princess.

Q. You have a daily change? A. Every day.

3 Redirect examination by Mr. KINGSLEY:

Q. When was it, Mr. Greenburg, that you used the unlicensed service in Chester? A. That has been some six or seven years ago.

Q. About seven years ago? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. How long ago? A. About six or seven years ago.

4 Q. Since the Motion Picture Patents Company was organized you have not shown any pictures, except those made by the Patents Company licensees? A. Yes, licensed pictures.

Q. Now, what pictures were those that you showed six or seven years ago? A. That I could not recall now.

Thereupon, EDWARD M. SUPER, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Super? A. 229 Pennsylvania Street, Burlington, New Jersey.

Q. In what business are you engaged? A. Exhibiting motion pictures.

Q. Do you own a theatre? A. I do.

Q. Where is that theatre located? A. 103-105 Mill Street, Bristol, Pennsylvania.

Q. Are you the manager of the theatre at Bristol, Pa.? A. Yes, sir.

Q. How long have you had your theatre at Bristol? A. I have been in the motion picture business in Bristol since 1907, June, 1907.

Q. During the time from June, 1907, down to 1913, have you been the manager of this theatre at Bristol, Pa.? A. I have.

Q. Have you, during that period, been acquainted with the motion picture business from the exhibitor's standpoint? A. Yes, sir.

Q. From what rental exchange are you obtaining motion pictures at present? A. The General Film Company's branch in Philadelphia.

Q. How long have you been obtaining motion pictures from the General Film Company's branch at Philadelphia? A. Since it has been in business.

Q. Before you obtained motion pictures from the General Film Company's branch at Philadelphia, from what exchange or exchanges were you obtaining motion pictures? A. The Electric Branch, the Electric Theatre Branch, at 44 North 10th Street, Philadelphia.

Q. Do you find it possible, at the present time, to select and advertise a definite program? A. Yes, very satisfactory.

Q. Do you advertise your program in advance? A. Every day.

Q. For how long a time is it possible for you to advertise a definite program in advance? A. Well, from the

1 time the picture is released, almost, I guess, if you want to advertise that long.

Q. How large a service do you run? A. You mean how many reels?

Q. Yes. A. About twenty-eight reels a week.

Q. Do you find that the General Film Company co-operates with you in arranging for any pictures that you may select? A. In every way they can, yes.

Q. Did you have any difficulty with respect to your service before you began taking service from the General Film Company? A. Yes, I did.

2 Q. What sort of difficulty or difficulties did you have at that time? A. Well, we would advertise pictures, and we spent quite a little money in this advertising, and we would not get the pictures.

Q. Did you have any difficulty in keeping clear from your competitor? A. We certainly did.

Q. Do you have any such difficulty now? A. Not at the present, no.

Q. Did you have any difficulty with repeaters when you were taking service from rental exchanges before you went to the General Film Company? A. Yes, I did.

3 Q. Have you ever felt that you were under any necessity or under any compulsion to take service from the General Film Company? A. No, I have not.

Q. Have you felt free to take service wherever it best suits your purpose? A. Yes, sir.

Q. Do you run any unlicensed motion pictures at your theatre now? A. Sometimes.

Q. Do you do it whenever you see fit? A. Whenever I see fit.

4 Q. Do you find that the producers of licensed motion pictures are competing with one another with respect to obtaining the favor of the exhibitors? A. I think they are, yes.

Q. Do they send you circulars and advertisements from time to time? A. Lots of them.

Q. And do they advertise in the trade papers? A. Yes, sir.

Q. Are you solicited from time to time by representatives of the independent exchanges? A. I never see any of them.

Q. Don't they come to see you? A. No.

Q. Have you at any time used the unlicensed service? A. 1
A short time.

Q. And when was it you used the unlicensed service? A. 2
As near as I recall, I think it was about three and a half years ago.

Q. How long did you use the unlicensed service? A.
Until my opposition gave it up.

Q. Do you remember for how long a time that was; was it for weeks, or months? A. I guess two or three months, as near as I can remember.

Q. You say, until your opposition gave it up. What was it that your opposition gave up? A. The General Film's service. 2

Q. Did your opponent go out of business, or change his service? A. They went out of business.

Q. Were you using the licensed service before you began to use the unlicensed service? A. I was.

Q. Was your opposition using the licensed service at the time you were using the licensed service and before you used the unlicensed service? A. Now, I forget. I think we were using the same service until they got a higher priced run that I could not afford to buy. 3

Q. And then, did you change to the unlicensed service? A. Yes.

Q. And did you compete with this opposition who was using the licensed service during the period of the three months, as you have testified, and use unlicensed service entirely in your theatre? A. We used the unlicensed service, yes.

Q. And at the end of that period, your opposition went out of business? A. Yes, sir.

Q. And after that, did you take the licensed service again? A. Yes, sir. 4

Q. What projecting machine do you use in your theatre? A. I have two, a Powers, and an Edison.

Q. Have you always used the Powers and Edison machines in your theatre? A. I have always used those two, yes.

Cross examination by Mr. GROSVENOR:

Q. When did you buy the Edison projecting machine

1 that you have? A. It has been about five and a half years ago.

Q. That was before the Patents Company was organized?

A. Yes, sir.

Q. Did you buy it unreservedly, and without condition?

A. I think so.

Q. Then, after the Patents Company was organized, you began to pay the two dollars per week royalty? A. I think I did, for a while.

2 Q. Why did you go back to the licensed service after you had been using this unlicensed service for a period?
A. Because it was better.

Q. You felt it was more profitable? A. Yes, sir.

Q. Your patronage fell off, did it, while you were using the unlicensed pictures? A. I think it did, yes.

Q. What made your competitor go out of business; was his license cancelled? A. No, sir. Too many places in the town, I thought at the time.

Q. How many theatres are there in Bristol today? A. Three.

3 Q. What pictures of films do the other two theatres show?
A. The independent.

Q. Each of them are using the independent? A. Both of them.

Q. This Electric Company that you got service from in 1910 was bought out by the General Film Company, was it not? A. I think it was, yes, sir.

Q. On direct examination, you stated that you didn't feel that you had to get or take service from the General Film Company. Now, will you please state where you could get these licensed pictures, today, which you are showing in your theatre, except from the General Film Company?

4 Mr. KINGSLEY: I object to that on the ground that it embodies a conclusion which is not properly drawn from the testimony of this witness, the witness having testified that he felt free to get pictures wherever he saw fit, and did not have to confine himself to licensed film.

The Witness: Read the question, please.

The question was read to the witness by the Examiner as follows:

“Q. On direct examination you stated that you didn’t feel that you had to get or take service from the General Film Company. Now, will you please state where you could get these licensed pictures to-day which you are showing in your theatre, except from the General Film Company?” 1

The Witness: The Greater New York.

By Mr. GROSVENOR:

Q. Located where? A. At Philadelphia. 2

Q. Now, where, except from the General Film Company, and the Greater New York Film Rental Company, can you get the licensed pictures today? A. I have never looked around. I have always been satisfied with the General.

Q. Do you know of any place where you can get the licensed pictures today, except from the General Film Company and the Greater New York Film Rental Company? A. It is just as I stated. I never had any occasion to look around. I don’t know whether I could get them anywhere else or not. 3

Q. I have not asked you whether you have looked around, but I say, do you know today of any place where you can get the licensed pictures, other than from the General Film Company and the Greater New York Film Rental Company? A. There isn’t any other place that I know of.

Q. You testified that whenever you see fit, you show unlicensed pictures in your theatre today? A. Yes, sir.

Q. Are you showing today any unlicensed pictures in your theatre? A. Not today, no, sir.

Q. When did you last show any unlicensed pictures? A. Well, would you like to have the exact date? 4

Q. Yes, if you can recall it. A. I think it was on Tuesday, October 28th.

Q. When did you first show unlicensed pictures in your theatre? A. I think it was when the opposition took the better service; as I recall, about three and a half years ago.

Q. How many people does the Bristol hold? A. Three hundred and fifty.

- 1 Q. How long has the Greater New York Company had a branch in Philadelphia? A. That I could not tell.

Redirect examination by Mr. KINGSLEY:

Q. What year was it that you showed an independent picture on October 28th? A. 1913.

Q. Since the time that you had an independent service in your house for some three months, have you occasionally run unlicensed pictures? A. I have, yes, sir.

- 2 Q. Have you, for the past three or four years, been able to get unlicensed pictures whenever you wanted them? A. I think I have.

Q. Were you able to get a complete program of unlicensed pictures at the time that you ran unlicensed pictures in your house? A. I think I was.

Q. Well, you did get a complete program, did you not? A. I did, yes, but it was not satisfactory.

ROBERT ETRIS, recalled for further direct examination, testified as follows:

- 3 Direct examination by Mr. CALDWELL:

Q. Mr. Etris, I think you have testified that during the year 1908, the Lubin Exchange in Philadelphia was a member of the Film Service Association? A. Yes, sir.

Q. During the year 1908, in Philadelphia, were the so-called licensees competing with one another for the business of the exchanges in Philadelphia? A. Yes, sir, they were.

- 4 Q. To what extent were they competing, and in what way? A. They were employing solicitors to go around to the various exhibitors, and offer them various inducements to come with the various exchanges, both in money and in quality of service.

Q. Were they advertising very extensively in Philadelphia? A. Perhaps I did not understand your first question. Did you refer to the manufacturers or the exchanges, simply?

Q. I am referring now to the licensed manufacturers. You understood that I was referring to the exchanges? A. To the exchanges. I did not catch the question.

Q. Now, will you answer that question with respect to the competition in Philadelphia between the licensed producers of motion pictures, the manufacturers, in the year 1908, after they took out an Edison license? A. As I recall it, the competition was quite keen between the manufacturers working under the Edison license. They were sending representatives around with sample reels, which we would run off on our machines, and they hoped, doubtless, to influence our buying by showing us their wares, in other words.

Q. And did they advertise to any extent at that time? A. Quite extensively. In the trade papers that were then in existence, and we were constantly receiving advance notice of films that they were expecting to put on the market.

Q. And did they circularize the trade in Philadelphia? A. To the best of my recollection, they did.

Q. After the formation of the Patents Company, did the licensed manufacturers and importers of the Patents Company continue to compete in Philadelphia among themselves? A. Oh, yes, there was no change, as far as I recall. No change whatever in the method of advertising and soliciting the business of the various exchanges.

Q. Was there any decrease in the activity of the competition, as far as you could see, in the year 1909? A. None whatever. I could not see any change.

Q. And as long as you remained in Philadelphia? A. As long as I was in Philadelphia, I could see no change whatever.

Q. In the years 1910 and 1911, up to the time you left Philadelphia, what competition did you find between the General Film Company and the unlicensed exchanges in Philadelphia? A. After the formation of the Patents Company, there were several independent exchanges came into existence. I do not recall how many. The competition from the unlicensed side became stronger and stronger from the time of the formation of the Patents Company up to the time that I left Philadelphia.

Q. During the year 1911, was that competition formidable? A. As I recollect it, it was not so formidable, but was becoming stronger and stronger up to the time that I left.

Q. Do you recall how many unlicensed exchanges there

1 were in Philadelphia in 1911? A. I can recall three, but I think there were more. We heard of various small exchanges, located in different parts of the city, but I recall definitely but three.

Q. Since October, 1911, you have been a branch manager of the General Film Company in New York? A. Since May, 1911.

Q. And what was your branch? A. When I first came here, I took charge of the Actograph branch, which was in February of 1913, combined with the Weiss branch, at the present address, 71 West 23rd Street.

2 Q. To what extent are you authorized by the General Film Company to make your own terms with exhibitors whom you serve? A. There are no restrictions placed at all. I work entirely along my own ideas.

Q. You have a free hand? A. Free hand, absolutely.

Q. What system of booking do you have? A. In our branch, we use the so-called open booking; in other words, the exhibitor sends in written requests which are fastened to his booking page, and when the booker or bookers book his show, they pay particular attention to the various requests
3 received from that exhibitor. He receives no set makes from week to week, in other words.

Q. You have, of course, a schedule, haven't you, of your booking with each exhibitor? A. Only as far as age is concerned. We stick to the age for the exhibitor, but not to the makes. We assort the makes just as much as possible, as that improves his program.

Q. When an exhibitor takes service, he indicates to you the age of the film he desires? A. He pays according to the age, yes.

Q. And tells you what age he wishes? A. Yes, sir.

4 Q. And gives you some idea of the character of the program that he wishes to exhibit? A. Always.

Q. How it is to be balanced? A. Yes, sir.

Q. Now, is the exhibitor in the branch which you manage, at full liberty to select his own program? A. Not absolutely, because they would naturally select nothing but the so-called better makes.

Q. You have just stated that the exhibitor sends in to you requests as to the pictures that he would like. You usually comply with those requests, do you not? A. Oh, yes, but that would be possibly two or three out of five

or six reels for a show. Not that he would attempt to select from thirty to forty reels, which would be his entire show for a week. 1

Q. That is, he will send you a list of a number of pictures from which he would like the selection to be made, is that the idea? A. That is the idea, yes. Giving us—expecting us, rather, to select two or three of his preferences in each day's program.

Q. And if a picture which has been included by you in his program is not satisfactory, do you endeavor to change it in order to meet the wishes of the exhibitor? A. Always. Very often it is impossible, if he expects the same age as other customers have, since he has received his program, been booked in, so that there are no open reels of the same age, but if he is willing to take the first open reel, then we are always glad to change a subject. 2

Q. In point of fact, you usually comply with his wishes? A. Usually, yes.

Q. Now, to what extent are you competing in your branch with the unlicensed exchanges, the so-called independent exchanges? A. Well, we are in constant competition with them. I do not know just how to say to what extent. 3

Q. Well, who are your principal competitors? A. The Mutual Film Company, the Universal and the Famous Players.

Q. Do you know how many exchanges they have here, the Universal and the Mutual, in New York? Name those with whom you are in the most active competition. A. I am in most active competition with the Mutual, which is in the same building as my branch.

Q. In what way are you competing with the Mutual and the Universal? Just explain what you mean by that. A. Mostly in price. They usually offer an inducement in price when they take a customer away. 4

Q. Are they constantly getting your customers from you? A. Oh, yes, every week, and we get some of theirs. We have solicitors and they have solicitors.

Q. And is it about an even swap between you? A. At the present time, very close. I cannot say that either side has much of an advantage.

Q. Have you any competition with the exchanges which deal in special feature pictures? A. They are beginning

1 to be quite an item to be considered. They seem to be cutting more and more into our business, as special features, which are used, of course, cut off that number of reels from our customer's program, and we are expected to make a corresponding reduction in his price.

Q. There are a great many of those special feature companies located here, are there not? A. Quite a number. I have not attempted to figure how many. There seem to be new ones coming right along.

2 Q. Have they taken many of your customers away from you? A. I cannot say that they have taken many customers, but they have caused reductions in a large number of cases. One-half of our service would be cut off, and filled in with some special production from time to time.

Q. And in what character of theatres is that competition most seen, the smaller ones or the larger ones? A. The larger ones, mostly. The better class of theatres.

Q. In other words, they are taking from you a good deal of the patronage of your best customers?

Mr. GROSVENOR: I object to that as leading, the witness not having used the words "a good deal."

3 The Witness: Yes.

By Mr. CALDWELL:

Q. How often does it happen? A. An average of not less than three times a week, in the last four months.

Q. Is that branch of the business growing, the special feature? A. Continually, at the present time.

Q. Many new companies are entering that field? A. They are.

4 Mr. GROSVENOR: I object to the question and answer as leading, also.

By Mr. CALDWELL:

Q. And is it developing rapidly? A. I can only judge from the effect on my own business. It has affected our business considerably.

Whereupon, at 11:45 A. M., the hearings are adjourned until 2:30 P. M., at the same place.

NEW YORK CITY, December 3, 1913.

1

The hearings were resumed, pursuant to adjournment, at 2:30 o'clock P. M., December 3, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

The following exhibits were returned to Mr. Charles F. Kingsley:

Defendants' Exhibit No. 114, being copy of Writ of Injunction in case of Thomas A. Edison *v.* American Vitagraph Company *et al.*, dated September 18, 1900.

2

Defendants' Exhibit No. 115, being Credit Memorandum of Edison Manufacturing Company, in favor of Blackton & Smith.

Defendants' Exhibit No. 116, being copy of letter from The American Vitagraph Company to W. E. Gilmore, Edison Mfg. Co., Orange, N. J., dated January 12th, 1901.

Defendants' Exhibit No. 117, being receipt of Kerr, Page & Cooper for \$400, received from the Vitagraph Company of America, and dated March 24th, 1905.

3

Defendants' Exhibit No. 118, being letter of J. O. Edmonds, dated March 15, 1907, addressed to Vitagraph Company of America.

Defendants' Exhibit No. 119, being letter of Armat Moving Picture Company addressed to The American Vitagraph Company, dated November 27th, 1902.

Defendants' Exhibit No. 120, being letter from P. B. Chase to The American Vitagraph Company, dated November 29th, 1902.

4

MR. KINGSLEY: I will state that Mr. L. W. Atwater is now present for cross examination.

MR. GROSVENOR: I have read Mr. Atwater's direct examination and will say that there are no questions that I care to ask Mr. Atwater on cross examination.

- 1 Thereupon THOMAS ARMAT, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Armat? A. Washington, D. C.

Q. What is your business? A. I am in the moving picture business.

- 2 Q. Are you connected with any company at the present time, or any corporation? A. I am President of the Armat Moving Picture Company.

Q. How long have you been connected with the Armat Moving Picture Company? A. Since the date of its organization, in 1900.

Q. When was the Jenkins-Armat patent taken out? A. In 1897; I think it was in July.

Q. Who was the inventor of the invention described in that patent, and upon which the letters patent were issued? A. Mr. C. Francis Jenkins, and myself, were the joint inventors.

- 3 Q. Did the Armat Moving Picture Company become the owner of this patent? A. It did.

Q. What was your relation to the Armat Moving Picture Company when it was organized? A. When it was first organized I was assistant to the General Manager.

Q. That is to say, you were the Assistant General Manager? A. Yes, sir.

Q. Were you familiar with the business of the Armat Moving Picture Company at that time, and for some years thereafter? A. I was entirely.

- 4 Q. As Assistant General Manager, did you have direct personal knowledge of its business affairs? A. I did.

Q. Were you in charge of its important business personally? A. I had a great deal to do with its important business personally.

Q. Did the Armat Moving Picture Company issue any licenses under the Jenkins-Armat patent? A. It did.

Q. Do you recall the number of that patent? A. Yes, 586,953.

Q. Did you say that the Armat Moving Picture Company had issued licenses under the patent No. 586,953? A. I did.

Q. Do you recall anyone to whom a license was granted? 1

A. The most conspicuous exhibitor that I recall was E. Burton Holmes, the lecturer.

Q. Did you have a contract with E. Burton Holmes? A. We did.

Q. And by "you" I mean the Armat Moving Picture Company. A. Yes, sir.

Q. Have you that contract with you? A. I have.

Q. Will you produce it? A. Yes; I here produce it.

Q. What was the term of the contract between the Armat Moving Picture Company and E. Burton Holmes? A. The contract ran, or must have run, for three years, and did in fact run for three years. 2

Q. What payments, if any, were to be made by E. Burton Holmes to the Armat Moving Picture Company?

Mr. GROSVENOR: Let him give the date on the record before going into all these things.

Mr. KINGSLEY: I will do that later.

Mr. GROSVENOR: I object to this as immaterial.

The Witness: He was to pay a royalty of \$25 a week.

By Mr. KINGSLEY: 3

Q. Did he in fact pay that royalty? A. He did in fact pay that royalty.

Q. What is the date of the contract? A. It is dated December 12th, 1900.

Mr. KINGSLEY: We offer it in evidence.

Mr. GROSVENOR: I object to it on the ground that it is immaterial and irrelevant, having been entered into at a time long prior to the formation of the combination alleged to be unlawful. 4

The contract offered is received in evidence, and marked by the Examiner, "Defendants' Exhibit No. 121," and is as follows:

Defendants' Exhibit No. 121.

This agreement entered into this 12th day of December, 1900, between the Armat Moving Picture Company, a corporation organized and existing under the laws of the State of West Virginia, and having its principal office in the City

- 1 of Washington, D. C., party of the first part, and E. Burton Holmes, of Chicago, party of the second part, witnesseth:

That the party of the first part, for and in consideration of one dollar, lawful money of the United States of America, paid by the party of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, grants to the party of the second part a license to operate under the patents of the party of the first part two motion picture machines for the purpose of illustrating the E. Burton Holmes lectures in the United States and for no other purpose, the said license to extend
2 for a period of three years.

The party of the second part agrees to pay to the party of the first part the sum of twenty-five dollars per week as a license fee for the use of said two motion picture machines for the period within the three years during which he is lecturing. In addition to this payment the party of the second part agrees to print boldly upon the first page of each and every program issued in connection with said lectures words to the following effect: Our motion pictures are exhibited under the license of the Armat Moving Picture Company, Washington, D. C., Owners of the Patents.
3

In consideration of the foregoing the party of the first part agrees that for each original negative film not less than fifty feet nor more than sixty feet long taken by the party of the second part for the use of the party of the first part, and which are up to the ordinary standard of excellence, and accepted as such by the party of the first part, to pay to the party of the second part the sum of twenty-five dollars, all such films to become the property of the party of the first part and no copies thereof to be retained by the party of the second part.

4 For any acceptable films which the party of the second part may have on hand and wish to turn over to the party of the first part for the purpose of taking copies therefrom, the party of the first part agrees to allow the sum of twenty-five dollars to be credited on the license account of the party of the second part for each film.

For any excess of length over fifty feet in the negatives taken for the benefit of the party of the first part, the party of the first part agrees to pay the cost of the negative film at the regular wholesale price, whether or not such excess develops satisfactorily. The camera for taking these

1
pictures will be furnished by the party of the first part without charge to the party of the second part. The party of the first part shall not be required to pay for any films taken by the party of the second part in excess of the number called for by the license account but shall have the option of taking such excess. In the event of the party of the second part failing to secure and turn over to the party of the first part a sufficient number of films to cover the license account the balance due by the party of the second part shall be paid in cash.

2
It is further agreed by the party of the first part that the name of E. Burton Holmes will not be used in any way directly or indirectly with the use or sale of films taken by E. Burton Holmes, party of the second part, without the written consent of E. Burton Holmes. The party of the first part makes this contract as the sole owners of the United States patents Nos. 586,953, 578,185, 580,749, 586,916 and 627,930 and it is understood that if the said E. Burton Holmes shall at any time hereafter use a machine that does not infringe any of the patents owned by the Armat Moving Picture Company or discontinue altogether to use any moving picture machine in connection with his lectures he shall not be liable to a royalty under this license, after such discontinuance. If the patents above recited shall be declared to be invalid by a court of competent jurisdiction this agreement shall terminate. 3

This license is granted with the understanding that the weekly payments mentioned in the body of this agreement shall not be for less than six months of each year, payable semi-annually.

IN WITNESS WHEREOF said parties have hereunto set their hands and seals on the day and year hereinbefore written, executing this agreement in duplicate. 4

ARMAT MOVING PICTURE CO., [SEAL.]

By

Thos Armat,
Vice Presdt.

E. BURTON HOLMES.

[SEAL.]

Signed and sealed in the presence

of

W. R. STARK,

LYMAN G. BOURNIQUE.

1 By Mr. KINGSLEY:

Q. You stated that the license granted to E. Burton Holmes was the most conspicuous one. Do you have in mind any other license to any other individual? A. Yes, sir, we granted some other licenses.

Q. And will you tell us to whom? A. Well, among them was one to a Mr. B. B. Lawrence.

Q. Was that a written agreement, or did the Armat Moving Picture Company have a written agreement with Mr. B. B. Lawrence? A. It did, and I have the contract
2 here. I have that agreement here, and here produce it.

Q. Will you let me have it, please? A. Yes.

Q. What is the date of the contract with B. B. Lawrence? A. That contract is dated March 14th, 1902.

Mr. KINGSLEY: I offer that contract in evidence.

Mr. GROSVENOR: I object to that as immaterial and irrelevant, and being dated at a time too remote to have any bearing upon the issues in this case, and, also, on the ground that it is incompetent.

3 The contract offered is received in evidence, and marked "Defendants' Exhibit No. 122," and is as follows:

Defendants' Exhibit No. 122.

LICENSE.

In case I or my associates, to be known as the party of the second part, give exhibitions of motion pictures, the following contract is to be in force:

4 This agreement entered into this 14th day of March, 1902, by and between the Armat Moving-Picture Company, a corporation organized and existing under the laws of the State of West Virginia, and having its principal office in the City of Washington, D. C., party of the first part, and B. B. H. Lawrence, for himself, party of the second part, WITNESSETH,

That the party of the first part, for and in consideration of one dollar, lawful money of the United States of America, paid by the party of the second part, receipt of

which is hereby acknowledged, grants to the party of the second part a license to operate, under the patents of the party of the first part, one motion picture machine for the period of 12 months, at the rate of \$25 per week, payable four weeks at a time, in advance, at the office of the Company, at Washington, D. C. 1

And the party of the second part agrees to buy or lease films exclusively through the party of the first part, and the party of the first part agrees to give the party of the second part the benefit of its experience in the selection of same, and furnish them at a fair and reasonable price or rental. 2

The party of the second part agrees to give a cash bond of \$150.00 to cover the cost of the projecting machine furnished by the party of the first part.

The party of the first part grants this license as the owners of United States Patents 586,953, 578,185, 530,749, 586,916, and 627,930, of which the party of the second part acknowledges the validity.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals, on the day and year first hereinbefore written. This agreement made in duplicate. 3

B. B. H. LAWRENCE, [SEAL.]

THOS. ARMAT. [SEAL.]

ARMAT MOVING PICTURE CO.

Signed and sealed in the presence of

T. CUSHING DANIEL.

The Witness: I was going to continue my answer, and say that that contract provided for the payment of a royalty of twenty-five dollars per week. 4

Mr. GROSVENOR: For how long?

The Witness: For twelve months.

By Mr. KINGSLEY:

Q. Do you have in mind any other licenses that were granted by the Armat Moving Picture Company to exhibitors or lecturers? A. There were some exhibitors who came to Washington, and were threatened with suits un-

1 less they paid royalties, and some of them paid royalties of twenty-five dollars per week, and—

Mr. GROSVENOR: I object to the witness answering as to anything except specifically in response to the question.

The Witness: Just read the question, please.

The question was repeated by the Examiner as follows:

2 "Q. Do you have in mind any other licenses that were granted by the Armat Moving Picture Company to exhibitors or lecturers?"

Mr. KINGSLEY: You may answer that question, Mr. Armat, by "yes" or "no."

The Witness: I answer yes.

By Mr. KINGSLEY:

3 Q. What exhibitors or lecturers have you in mind to whom licenses were granted, and whom you know received licenses from the Armat Moving Picture Company? A. Among others, Bob Fitzsimmons, the prize fighter, who was appearing in a play called "The Honest Blacksmith."

Mr. GROSVENOR: I object to all this testimony, not only on the ground that it is immaterial, but also on the ground that it is confusing and misleading, unless, in respect to each of these licenses, the date be given when the license was entered into.

4 The Witness: Mr. Spoor.

By Mr. KINGSLEY:

Q. Mr. George Spoor? A. Mr. George K. Spoor, of Chicago, and several others whose names I cannot now recall.

Q. Did the Armat Moving Picture Company grant a license to one Samuel Scribner? A. It did.

Q. Did the Armat Moving Picture Company grant a license to one Richard Schuyler? A. It did.

Mr. GROSVENOR: What period are you talking about? 1

The Witness: I think that was in 1900 or 1901.

By Mr. KINGSLEY:

Q. Did the Armat Moving Picture Company take any steps to enforce its patents, and especially the so-called Jenkins-Armat Patent No. 586,953? A. It did—

Mr. GROSVENOR: I object to this question as too indefinite, irrelevant, and remote, and, further, upon the ground that the time and date is not specified, and therefore the testimony is misleading. 2

By Mr. KINGSLEY:

Q. Will you tell us generally what steps the Armat Moving Picture Company took to enforce its patents? A. The Armat Moving Picture Company exhausted its efforts to collect royalties from various infringers of its patents before it brought any suits, and it then brought suits against numerous infringers. 3

Mr. GROSVENOR: I make the same objection, that the testimony is too indefinite to have any bearing, even if relevant.

By Mr. KINGSLEY:

Q. Did these suits extend over a period of years? A. I find, on looking over a memorandum of the suits filed by the Armat Moving Picture Company, which I have, that we first brought suit against the American Mutoscope & Biograph Company in 1900. That is to say, we took up and prosecuted a suit against that company that had been inaugurated by the Animated Photo Projecting Company the year before, in April, 1899. 4

Q. Now, Mr. Armat, if you will just answer the question I asked you, and that is, whether these suits extended over a period of years or not, I will be able to take it up with you in detail? A. Yes, these suits extended over a considerable period of time.

- 1 Mr. GROSVENOR: I object to the answer, and to the use of the term "considerable," the same being merely the conclusion of the witness.

The Witness: In fact, from that date until 1908.

By Mr. KINGSLEY:

- Q. Mr. Armat, did the Armat Moving Picture Company send out warnings, circulars, or notices to moving picture exhibitors and others throughout the United States with
2 reference to possible infringements of its patents? A. It did send out a great many of such notices.

Q. I show you a circular, dated Washington, D. C., entitled "Final Notice to Infringers of the Armat Patents," and ask you if you recognize it?

Mr. GROSVENOR: What is the date?

The Witness: It is not dated. I recognize it as one of the notices sent out by the Armat Moving Picture Com-
pany.

3

By Mr. KINGSLEY:

Q. Can you tell us on or about what date that circular was sent out to the exhibitors and others throughout the country? A. My recollection is that that circular was sent out in about the year 1901, and subsequently.

Mr. KINGSLEY: We offer it in evidence.

4

Mr. GROSVENOR: I object to the admission of this paper as being issued at a time, as shown by the testimony of the witness, so remote that it can have no bearing on any of the issues in this case.

The paper offered is received in evidence, and marked by the Examiner "Defendants' Exhibit No. 123," and is as follows:

Defendants' Exhibit No. 123.

1

Letterhead of Armat Moving Picture Company.

FINAL NOTICE TO INFRINGERS OF THE ARMAT PATENTS.

The Armat Moving-Picture Company, of Washington, D. C., which has just purchased all of Thomas Armat's patents controlling the production of animated pictures, has been advised that you are boldly infringing said patents. As an infringer, you are liable to summary injunction, to damages (as much as three times the actual damage), and for past profits. You are an infringer if you use, lease, hire others to use for you, or make or sell, without our license, any machine covered by our patents. All machines on the American market infringe the Armat patents, including particularly those manufactured by the Edison company. In case you are manufacturing, leasing, or using any such machines, notice is given you that if you do not promptly discontinue your infringements of United States Patents Nos. 578,185, 580,749, 586,953, 588,916, 627,930, and settle for past illegal use of such machines, suit will be brought against you in the United States Courts as soon as our lawyers can reach your case. **THIS NOTICE IS FINAL.**

2

3

In case you wish to use these animated pictures, we advise you to deal directly with this company, and thus avoid all litigation and damage suits. You will find us better prepared than any concern in this country to give you a prompt, complete, and up-to-date service, and you will also find us disposed to deal with you fairly and honorably. **BUT ALL INFRINGERS MUST STOP AT ONCE.**

4

Very truly yours,

By Mr. KINGSLEY:

Q. I show you a copy of a circular entitled "A Warning," and ask you if you recognize it? A. I do, very distinctly.

Q. What is that circular, Mr. Armat? A. That is a

- 1 circular that accompanied the one just referred to, and all circular letters warning infringers against infringement of our patents.

Q. Is this an extract from the United States statutes?

A. It is.

Mr. KINGSLEY: I offer it in evidence.

- 2 Mr. GROSVENOR: I make the same objection to this paper, the testimony of the witness showing that the paper was issued at a time so remote and long anterior to the bringing of this action and the formation of the combination alleged to be unlawful that it can have no bearing upon any of the issues in this case.

The paper offered is received in evidence, and marked by the Examiner "Defendants' Exhibit No. 124," and is as follows:

Defendants' Exhibit No. 124.

A WARNING!

3 UNITED STATES STATUTES RELATIVE TO PATENTS.

1. U. S. STATUTES AT LARGE, 318. SECTION 5. *And be it further enacted*, That if any person shall make, use or sell the thing so invented the exclusive right of which, as aforesaid, have been secured to any person by patent, without the consent of the patentee, his executors, administrators, or assigns, first obtained in writing, every person so offending shall forfeit, and pay to the patentee a sum that shall be at *least* equal to *three times* the price for which the
- 4 patentee has sold or licensed, to other persons, the use of said invention, which may be recovered in an action on the case founded on this act, in the circuit court of the United States, or any other court having competent jurisdiction.

5. U. S. STATUTES AT LARGE, 117. SECTION 14. *And be it further enacted*, That whenever in any action for damages for making, *using*, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall

be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentees, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States.

16. U. S. STATUTES AT LARGE, 198, SECTION 55. *And be it further enacted*, That all actions, suits, controversies, and cases arising under the patent laws of the United States shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of circuit courts, or by the Supreme Court of the District of Columbia, or of any territory; and the court shall have power, upon bill in equity filed by the party aggrieved, to grant *injunctions* according to the course and principles of course of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any case for an infringement, the claimant (complainant) shall be entitled to recover, in *addition* to the *profits* to be accounted for by the defendant, the *damages* the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to *increase* the same in its discretion that are given by this act to increase the damages found by verdicts in actions upon the case; but all actions shall be brought during the term for which the letters patent shall be granted or extended, or within six years of the expiration thereof.

SECTION 59. *And be it further enacted*, That damages for the infringement of any patent may be recovered by action on the case in any circuit court of the United States, or district court exercising the jurisdiction of a circuit court, or in the Supreme Court of the District of Columbia, or of any territory in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict shall be rendered for the plain-

- 1 tiff, the court may enter judgment thereon for any sum above the amount found by the verdict as actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with costs.

- U. S. REVISED STATUTES, SECTION 4921. "The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such
- 2 terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in *addition* to the *profits* to be accounted for by the defendant, the *damages* the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages, found by verdicts in actions of the nature of actions of trespass upon the case."

3 PATENT DECISIONS.

Increased *damages* may be properly awarded by a court where it is necessary to award them in order to prevent a defendant infringer from profiting by his own wrong.

The *profits* which are recoverable in equity for the infringement of a patent are those which the defendant made from the infringement.

Rubber Co. v. Goodyear.

Tilghman v. Proctor, etc.

- 4 The patentee's royalty is no measure of the defendant's *profits*, even in a case where a patentee habitually exercises his exclusive right by granting licenses to others. Nor are any other facts which relate to the measure of the complainant's *damages*, material to the inquiry touching the amount of defendant's *profits*.

Elizabeth v. Pavement Co., etc., etc.

Interest on infringer's profits is allowed from the date

of a master's report ascertaining the amount of those profits. 1

Tilghman v. Proctor.

Crosby Valve Co. v. Safety Valve Co., etc., etc.

The amount of the *profits* which defendant derived from the infringement, has no direct relevancy to the question of the plaintiff's *damages*, because those *profits* are sometimes much larger than plaintiff's pecuniary injury.

Seymour v. McCormick.

New York v. Ransom. 2

Packet Co. v. Sickles, etc.

The power to inflict *punitive damages* is committed by the statute to the judge. He may exercise that power by entering a judgment for any sum above the amount of the verdict, not exceeding three times that amount together with costs.

Seymour v. McCormick, etc., etc.

3

By Mr. KINGSLEY:

Q. I show you a circular letter, dated Washington, D. C., March 25, 1902, signed Armat Motion Picture Company, and ask you if you recognize it? A. Yes, I recognize it quite well.

Q. What is the circular, Mr. Armat? A. It is a circular to infringers, warning them against infringing our patents.

Q. Was this circular sent to the trade generally? A. It was. 4

Q. Was it accompanied by a copy of the pamphlet which has been introduced in evidence, "Defendants' Exhibit No. 124," and headed "A Warning"? A. It was always, to the best of my knowledge.

Mr. KINGSLEY: I offer that paper in evidence.

Mr. GROSVENOR: I make the same objection to the introduction of this instrument as I made to the last exhibit.

The paper offered is received in evidence, and

- 1 marked by the Examiner "Defendants' Exhibit No. 125," and is as follows:

Defendants' Exhibit No. 125.

Letterhead of

ARMAT MOTION-PICTURE COMPANY.

WASHINGTON, D. C., March 25, 1902.

- 2 To Exhibitors of, and Dealers in, Motion Picture Machines,
Films and Supplies.

Gentlemen:—

- 3 The Armat Moving-Picture Company, of Washington, D. C., which has purchased all of Thomas Armat's Patents controlling the production of animated pictures, desires to inform all infringers of its patents that they are liable to summary injunction, to damages (as much as three times the actual damage), and for past profits. You are an infringer if you use, lease, hire others to use for you, or make or sell without our license any machine covered
4 by our patents. All machines on the American market infringe the Armat patents. In case you are manufacturing, leasing or using any such machines, notice is given you that if you do not promptly discontinue your infringements of United States Patents Nos. 578,185, 580,749, 586,953, 588,916, 627,930, and settle for past illegal use of such machines, suit will be brought against you in the United States Courts as soon as our lawyers can reach your case. THIS NOTICE IS FINAL.

- 4 The case of Edison v. The American Mutoscope & Biograph Company has been decided against Edison, as was predicted by the best informed opinion on the subject. This decision in nowise affects the interests of this company, as the Edison patent was on a CAMERA, while the several patents owned by this company control the successful projection of motion pictures on screens—in other words, the use of the film or picture when taken.

Our big suit for \$150,000 damages and an accounting against the American Mutoscope & Biograph Company it is expected will be argued in the April term, or as soon thereafter as possible.

In case you wish to use these animated pictures we advise you to deal directly with this company and thus avoid all litigation and damage suits. You will find us better prepared than any concern in this country to give you a prompt, complete and up-to-date service, and you will also find us disposed to deal with you fairly and honorably. BUT ALL INFRINGERS MUST STOP AT ONCE.

Very truly yours,
ARMAT MOTION PICTURE COMPANY.

1

By Mr. KINGSLEY:

Q. Mr. Armat, were you familiar with the litigation which was carried on by the Armat Moving Picture Company against infringers? A. I was, entirely.

Q. Did you consult with attorneys, and make arrangements to retain attorneys to carry on the litigation for the Armat Moving Picture Company from time to time? A. I did.

Q. Have you refreshed your memory with regard to the suits which were carried on by the Armat Moving Picture Company from 1900 onward? A. To a certain extent I have.

Q. Have you any paper or document with you which will refresh your memory, so you can testify regarding these suits? A. I have a list of such suits, which was prepared at the office of Messrs. Church & Church.

Q. Were they your attorneys in most of those suits? A. They were.

Q. What suits, other than the one regarding which you have just testified, were brought in the period from 1901 onward by the Armat Moving Picture Company?

2

3

4

Mr. GROSVENOR: I object to the witness testifying from this memorandum, the same not having been prepared by him, and he not having testified as to the accuracy of the same, and therefore the authenticity of the document has not been proven, and no one has been called to show that it is correct and accurate, the proper person or persons to call regarding the same being, of course, the attor-

- 1 ney or attorneys who prepared it, and searched the records, if any such search was made.

The Witness: Will you please repeat the question?

The question was repeated by the Examiner as follows:

- 2 "Q. What suits, other than the one regarding which you have just testified, were brought in the period from 1901 onward by the Armat Moving Picture Company?"

Mr. GROSVENOR: And the introduction of this testimony in this manner affords no proper opportunity for cross examination as to the sources of the information stated on the document, which is now being used for the purpose of refreshing the recollection of the witness.

By Mr. KINGSLEY:

- 3 Q. Before answering the last question, Mr. Armat, let me ask if this paper refreshes your memory regarding the actions about which I have asked you? A. It does, and I can recall all the suits quite distinctly.

Q. You were, at the time these suits were brought, in an executive position in the Armat Moving Picture Company? A. I was.

Q. And were conversant with the details of the suits, and with their progress? A. I was.

Q. You were in frequent consultations with the attorneys who had charge of these suits? A. Yes, sir.

- 4 Q. And this paper from which you are refreshing your recollection, you know to be correct? A. I know it to be absolutely correct.

Q. Now, will you kindly answer the question? A. In addition to the suit that I have referred to, there was a suit filed against S. Lubin in the Eastern District of Pennsylvania, in 1901. There was another suit filed against P. B. Chase, in the District of Columbia, in March of 1901, and another suit filed against P. B. Chase, in the District of Columbia, in June, 1901. Another suit filed against the Edison Manufacturing Company, on November 28th, 1902.

Q. Where? A. I think that was in the Southern Dis-

trict of New York. There was another suit filed against the Eden Musee, in the Southern District of New York, on February 5th, 1903, and there was another suit filed against Lyman H. Howe, a very prominent and well-known exhibitor, in the Middle District of Pennsylvania. I think that was about 1902. There was a suit filed against Robert H. Baum, in the District of Columbia, on November 29th, 1907, and a suit filed against the Interstate Amusement Company, in the District of Columbia, in October, 1907. There was a suit filed against William Fox, in May, 1908, and another suit filed against William Fox on the same date, under another patent. In addition to these suits, there were several that were not filed by Messrs. Church & Church, but by other attorneys, among them being one against the Buffalo Exposition Company, and S. Lubin, which was filed by Mr. Elbert Hamlin.

Q. When? A. I think that was in 1904, but I am not sure of the date.

Mr. GROSVENOR: And where?

The Witness: In whatever jurisdiction Buffalo is situated, I don't remember the jurisdiction, or I don't know.

By Mr. KINGSLEY:

Q. In the course of the litigation between the Armat Moving Picture Company and the Edison Manufacturing Company, was an injunction obtained against the Edison Manufacturing Company? A. There was.

Q. I show you a paper entitled "Copy of Injunction against Edison," and I ask you if you recognize it? A. I do.

Q. Is that a copy of the injunction that was obtained against the Edison Company in the course of the litigation between the Armat Moving Picture Company and the Edison Manufacturing Company? A. It is.

Q. What is the date of that injunction? A. That is dated January 8th, 1903.

Q. What did the Armat Moving Picture Company do with this copy, or with this injunction, with reference to circulating it among the trade, if anything? A. They sent out a large number of them to infringers.

1 Q. Is this one of the copies, or is this a copy of the injunction which you sent out to the trade? A. It is.

Q. How widely and generally did you circulate it? A. Why, several thousands were circulated.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the objection that the decree was entered at a time so remote that it has no bearing upon the issues in this case, and that the paper is immaterial, incompetent and irrelevant.

2 The paper offered is received in evidence and marked "Defendants' Exhibit No. 126," and is as follows:

Defendants' Exhibit No. 126.

COPY OF INJUNCTION AGAINST EDISON.

United States of America, }
Southern District of New York, } ss.:

3 *The President of the United States to the Edison Manufacturing Company, Greeting:*

Whereas the Armat Moving Picture Company has lately exhibited its bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against you, the said defendant, praying to be relieved touching the matters therein complained of, and especially that you, the Edison Manufacturing Company, and all acting under you, may be restrained from further infringing the patent and the rights of the said complainants in the premises, in the said bill mentioned, in any way or manner contrary to law or equity.

4 We, therefore, in consideration thereof and also of the particular matters in the said bill set forth, do strictly command and enjoin you, the said Edison Manufacturing Company, your officers, servants, workmen, and agents, and all others acting under or with you, and each and every of you, that from henceforth, you do absolutely and entirely desist and refrain from directly or indirectly infringing the said letters patent No. 586,953, in respect to claims 1, 2, 3, 4, 5, 7 and 8, thereof, and from manufacturing, using

or selling the said infringing machines, or any machines, or apparatus or parts thereof, containing or embodying the invention or improvements covered by said claims of said letters patent, until the further order, judgment and decree of said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at New York, this 8th day of January, A. D. 1903, and in the one hundred and twenty-seventh year of the independence of the United States.

JOHN A. SHIELDS,

Clerk of the U. S. Circuit Court for the Southern District of New York.

By Mr. KINGSLEY :

Q. Was the litigation between the Armat Moving Picture Company and the Edison Manufacturing Company actively prosecuted? A. It was.

Q. Did it ever reach a final determination in the sense of being ended by a final decree of the Court? A. It did not.

Mr. GROSVENOR: I want to object to the testimony of the witness, and move to strike out his answer to the question that it was "actively prosecuted," on the ground that said answer is merely a statement of the opinion of the witness, and valueless, as appears from his evidence, for no litigation could be actively prosecuted which, in the period of five years, had not reached some definite conclusion, and, furthermore, that the subject matter of the answer is immaterial, irrelevant and incompetent, and has no bearing on any of the issues.

Mr. KINGSLEY: You forget, Mr. Grosvenor, that this is patent litigation.

By Mr. KINGSLEY :

Q. What became of the suit between the Armat Moving Picture Company and the Edison Manufacturing Company? A. It was prosecuted until the Edison Company accepted a license under the patent.

- 1 Q. And when did they accept a license, do you recall?
A. In 1908.

Mr. GROSVENOR: December, 1908.

The Witness: December, 1908.

By Mr. KINGSLEY:

- Q. Was P. B. Chase, whom you have mentioned as a
defendant in two of these suits brought by the Armat
2 Moving Picture Company, an exhibitor of motion pictures?
A. He was the proprietor of the Chase Theatre, in Wash-
ington, which from time to time exhibited moving pictures.

Q. Was Lyman H. Howe, whom you have mentioned as
a defendant in one of the actions brought by the Armat
Moving Picture Company, an exhibitor of motion pictures?
A. He was, and one of the best and most prominent.

Q. Was Robert H. Baum, whom you have mentioned as
a defendant in one of the actions brought by the Armat
Moving Picture Company, an exhibitor of moving pictures?
A. He was.

- 3 Q. Were all of the other parties whom you have men-
tioned as defendants in suits brought by the Armat Moving
Picture Company, exhibitors of moving pictures? A. They
were, with the possible exception of the Buffalo Exposition.

Q. You mean the Buffalo Exposition Company? A.
Yes.

Q. But the Buffalo Exposition Company was joined as
a defendant with S. Lubin? A. Yes, sir. S. Lubin was
the exhibitor.

-
- 4 HARRY SCHWALBE, the next witness called on behalf
of the defendants, being first duly sworn by the Examiner,
deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Schwalbe, in what business are you engaged?
A. As a manager for the General Film Company. Branch
manager in Philadelphia.

Q. And how long have you occupied that position? A.
Since the time the General Film Company began opera-

tions there. June 27th, 1911, I guess, or 1910; I am not sure which. 1

Q. It is in evidence that they began business in June, 1910, if that will refresh your recollection. A. That is the time.

Q. Prior to June, 1910, in what business were you engaged? A. In the film business.

Q. And in what branch of the film business? A. Conducting a licensed film exchange.

Q. What was the name of your exchange, and where was it conducted? A. Electric Theatre Supply Company, 44 North 10th Street, Philadelphia. 2

Q. And how long had you conducted that business? A. From about 1906. Around that time.

Q. Was that a corporation? A. Yes, sir.

Q. Were you the principal owner? A. Yes, sir.

Q. President of the Company? A. Yes, sir.

Q. Prior to 1906, were you in the motion picture business in any of its phases? A. Yes, I started in as an exhibitor in 1905.

Q. Where? A. In Philadelphia. The street address was 2709 Kensington Avenue. The first place we started. 3

Q. Was your exchange a member of the Film Service Association? A. Yes, sir.

Q. And did you obtain an Edison license? Were you an Edison licensee? A. Yes, we were an Edison licensee.

Q. Then, in January, 1909, did your company become a licensee of the Motion Picture Patents Company? A. Yes, sir.

Q. You are familiar with the requirements in the license of the Motion Picture Patents Company that a minimum of \$2,500 worth of film be leased each month? A. Yes, sir. 4

Q. You had been in the exchange business for some time prior to January, 1909, you say? A. Yes, sir.

Q. Based on your experience in the exchange business, could an exchange properly serve its customers if it took less than \$2,500 worth of film per month? A. Not in our territory, no, sir.

Q. At that time, about how much film was your exchange taking? A. What time do you refer to now, please?

Q. January, 1909. A. Well, at least twice as much.

1 At least \$5,000 a month. I don't remember just exactly what we were purchasing, but we were purchasing at least twice that much.

Q. Did you ever know in your territory of any demand on the part of an exchange, for the accumulation of a library of so-called educational or scientific subjects? A. No such demand existed at that time, nor does it exist now, although it may come up at some time in the near future, and we have partly provided for it by accumulating a partial library of such subjects.

2 Q. Is there much of a demand at the present time in Philadelphia for so-called educational pictures? A. None whatever.

Q. About what percentage of pictures exhibited in Philadelphia are composed of the so-called educational or scientific subjects? A. Not over ten per cent.

Q. All the rest are dramas or comedies, or purely theatrical subjects? A. Yes.

3 Q. You find it rather hard to dispose of educational pictures as a rule, do you not? A. The exhibitors, as a rule, do not accept them. They hand them back to us as we pass them out over the counter, and refuse to take them on the ground that it does not interest their audiences.

Q. And what little demand there is for pictures of that character, comes from what source? A. Churches and exhibitions, asylums for the education of, we will say, deaf and dumb children. We get very little out of them. We occasionally rent them, and when we do, they are at a very small figure, not over a dollar a reel at any time. We have taken up this library more with a view of supplying them with these subjects at these nominal figures, and we do it that way rather than with the idea of making any profit out of it. Scenic subjects, to the exchange, in my
4 experience, have always been unprofitable from a financial standpoint.

Q. Do you know whether, in your territory, there was any competition between the licensed manufacturers in the year 1908? I mean those that were licensed by the Edison Company, and subsequently among the licensed manufacturers of the Motion Picture Patents Company. A. Yes, I think competition has always existed there. The number of prints that were bought in Philadelphia were always guided greatly by the quality of the production of

the manufacturer. A manufacturer who was known to make good subjects would sell a great many more prints than one who made poor or mediocre subjects. 1

Q. What, if anything, did the manufacturers do to get the business of the exchange? A. They circularized the exchange with synopses, advance notices of coming reels, advertised in the trade papers, sent men around to see the exchanges to solicit standing orders or solicit orders for film.

Q. Does that competition continue to-day between the licensed manufacturers? A. Not to the extent of sending around solicitors, no, sir, but still, our standing order—my standing orders, at least, I know, are placed purely on the grounds of what I consider are the best products, and I buy a greater number of films of a good product than of the poor product, because the exhibitors demand the good product, and I have got to meet their demands. 2

Q. When you first entered the exchange business in Philadelphia, what was the character of the theatres there, the motion picture theatres? A. Principally store room shows.

Q. Has that condition changed since then? A. Yes. There are very few of them in existence now. 3

Q. What is the character of the motion picture theatres generally, throughout your territory, particularly in Philadelphia, as to structure, size and accommodation? A. Well, I might say that a fair sized house three years ago was one of 200 seats, and I am reasonably certain that no one, conversant with the business to-day, would think of engaging in the business unless the house had at least 500, in that territory. The houses have increased in size, and some of them run up as high as 1700 seats.

Q. Have you noticed any improvement in the character of the pictures that are released at the present time as compared with the releases in the years 1907 and 1908? A. Yes, I think that we could scarcely market the releases that were put on the market in 1907 and 1908, at the present time, because the business has undergone quite a change. The releases have improved, better performers, better photography and more carefully laid out scenarios. Stories that are better told all the way through. 4

1 Q. When did you sell your exchange to the General Film Company? A. June 27th, 1910.

Q. At what price did you sell? A. \$51,000.

Q. Were any threats made to you by any of the officers or agents of the General Film Company or of the Patents Company, that if you did not sell, your license might be cancelled? A. No, sir.

Q. Was the sale entirely voluntary on your part? A. Yes, sir.

Q. And the price was satisfactory? A. Yes, sir.

2 Q. And did you make any agreement with the General Film Company, either verbally or otherwise, that you would not engage in the exchange business in Philadelphia after you sold? A. No, sir. On the contrary, I really figured on going into the exchange business again.

Mr. GROSVENOR: You mean you became manager of their branch?

The Witness: Yes, sir.

3 By Mr. CALDWELL:

Q. But was it any part of the agreement between you and the General Film Company that you would remain as branch manager for any definite time? A. No, sir. It was distinctly understood at the time that I sold my branch to them, that that had nothing to do with any engagements as to the future.

4 Q. After the organization of the Patents Company in 1909, was the cost of service to the exhibitor in your territory increased? A. No, sir. The average cost to the exhibitor is about the same at the present time, although we are supplying them an average of a great number of reels for their daily programs.

Q. After the General Film Company acquired all of the licensed exchanges in Philadelphia, did it raise prices to the exhibitor? A. No, sir.

Q. About what is the average cost to the exhibitors in Philadelphia in your district to-day? A. About \$40 per exhibitor per week.

Q. And what was it prior to the formation of the Patents Company? A. About the same. I speak now prior to

the formation of the Patents Company for my branch only. I had no knowledge of what the cost in other districts except mine, per week, was. At the time of the organization of the branches and consolidation of all of the branches of the General Film Company in Philadelphia, when they were consolidated in one, the average price per week was about the same as it is now. 1

Q. They did not proceed to jerk up prices at all? A. No, sir.

Q. State about the average number of reels that were supplied prior to the formation of the Patents Company, at an average price of \$40 per week for service. A. Three and a half to four reels per day. 2

Q. And what is the General Film Company giving them today for the same price? A. About five reels per day.

Q. Who are your competitors in your territory today? A. Well, we have the Interstate Film Company, with two branches.

Q. What program does that company handle? A. Universal. And they also handle Ambrosio Features, and Gaumont Features. And there is the Continental Film Exchange, who handle the Mutual program. 3

Q. How many branches have they? A. Well, the Continental have only one buying branch, but they have a subsidiary branch in which they rent their reels after they have gone over their circuit in the buying branch. I don't recollect the name of that branch particularly, but they have two there. In addition to that, they have a feature film branch called the Federal Feature Film Company, which is controlled by the Mutual Film Corporation.

Q. So the Mutual maintains two branches, in addition to this special feature branch? A. Yes, sir. Then we also have about twenty or twenty-two feature film exchanges, all of which I cannot name, but some of which I can give you the names of, if you want me to. 4

Q. Will you mention the principal ones that you recall? A. Well, the Warner Feature Film Company, the Famous Players Film Company, Electric Theatre Supply Company, the Attractive Feature Film Company, the Prince Features, the United Features, the Federal Feature Film Exchange, the Monarch Feature Film Exchange, G. W.

- 1 Bradenburg Film Exchange, the Empire Film Exchange. That is all I can recollect at the present time.

Q. Do all those exchanges that you have just mentioned maintain offices in Philadelphia? A. Yes, sir.

Q. And are in active competition with you? A. Yes, sir.

Q. As manager of the Philadelphia branch of the General Film Company, do you make it a point to keep in touch with the motion picture theatres throughout your territory, whether licensed or unlicensed? A. Yes, sir, we have a circularizing list.

- 2 Q. And how many theatres altogether, motion picture theatres, are there in your territory? A. Seven hundred, about.

Q. And of that number, how many are served by the General Film Company? A. Three hundred and twenty, today.

Q. What is the territory served from your Philadelphia office? What cities do you take in? A. Well, we take in all of the eastern shore, because of superior train facilities, and we go—

- 3 Q. By the eastern shore, you mean the eastern shore of Maryland, Virginia, and Delaware? A. Yes, sir; which cannot be reached conveniently from Washington, but we do not go south to Baltimore the other way. We do not actually reach Baltimore. Washington takes care of that, because they have better train facilities from Washington to Baltimore than we have from Philadelphia to Baltimore. Then we take the eastern section of Pennsylvania, with the exception of the territory in and around Wilkes-Barre, which is supplied by our Wilkes-Barre branch. We take the southern part of New Jersey.

- 4 Q. That would take in the cities of Harrisburg and Reading? A. Yes, sir.

Q. Wilmington, Delaware? A. Yes, sir.

Q. All important cities? A. Yes, sir.

Q. And Camden, New Jersey, also? A. Yes, and Reading, Pennsylvania, and Lancaster, Pennsylvania. All of the adjacent cities.

Q. As to the character of the theatres served in Philadelphia by the General Film Company, I mean in point of size, capacity, location, how do the theatres served by

your competitors compare with the theatres served by the General Film Company? A. I do not just see what you mean by the character. Do you mean the way the theatres are conducted? 1

Q. No. I mean in point of size. I will put the question in a little different form. About how many theatres are there in Philadelphia that would seat 500 to 1,500? A. I should judge, about twelve.

Q. Of that number, how many theatres of that size are served by the General Film Company? A. About four or five. Four, anyway.

Q. That would leave from six to eight of the large theatres in Philadelphia that are served by your competitors, is that right? A. Yes, sir. 2

Q. Now, what is the situation as to Harrisburg, Pennsylvania, another large city in your territory? A. Well, there are six theatres there on the principal street. Two of them are supplied by the General Film Company exclusively. They use nothing but General Film service. A third theatre, that uses a General Film and unlicensed service mixed, and three theatres that use entirely unlicensed service. 3

Q. Then, of the six theatres in Harrisburg, on the principal street—and what street is that, by the way? A. Market Street.

Q. The General Film Company is getting about two and a half theatres out of six? A. Yes, sir.

Q. What is the situation in Camden, New Jersey? A. Well, we supply very few in Camden.

Q. How many theatres do you know of there being in Camden? Motion picture theatres? A. Twenty-three or twenty-four, I guess.

Q. And of that number, how many are served by the General Film Company? A. Only about four. 4

MR. GROSVENOR: When you say, "Served by the General Film Company," do you mean, served by your branch of the General Film Company?

The Witness: There are no theatres served in Camden, except by the General Film Company of Philadelphia, but they may be served by the Greater New York Film Rental

- 1 Company. I have no knowledge of whether they serve customers there or not. I have knowledge only of customers that we serve. They may be using licensed service there, from the Greater New York Film Rental Company, who have a branch right next door to our office in Philadelphia.

By Mr. CALDWELL:

Q. In any event, out of the twenty-four in Camden, you are serving only four? A. Yes, sir.

- 2 Q. What is the situation in Wilmington, Delaware? Take the principal street in Wilmington. Take Market Street, for instance. A. Market Street, running from Delaware, has, I think, six theatres in Market Street, and we supply two of the six.

Q. Your competitors have the other four? A. Yes, sir.

Q. Those are the principal motion picture theatres in Wilmington? A. Yes.

Q. Market is the principal street there, isn't it? A. Yes, sir.

Q. Do you happen to know the extent of the business done by the Special Feature Film exchanges in Philadelphia?

- 3 A. Yes, sir; I keep in pretty close touch with them. It is about \$6,000 a week.

Q. And what is the total amount of business done by the General Film Company in your branch? A. The total amount of film rentals, about \$13,000 a week.

Q. So that these special feature exchanges have nearly half as much business alone, as you have? A. Yes.

Q. That is not taking into account the business done by the two branch exchanges of the Mutual and the two exchanges handling the Universal program, is that right? A. That is right.

4

Mr. GROSVENOR: You mean by special features doing this \$6,000 business, all those different companies you have named on direct examination, other than the Mutual and Universal?

The Witness: Yes, sir.

Mr. GROSVENOR: Everything?

The Witness: Everything, other than the Universal and Mutual, yes. 1

By Mr. CALDWELL:

Q. What is the practice in your territory as to change of service by the exhibitors? I mean the change of reels. Is there a daily change? A. Yes, sir.

Q. That is quite common throughout your territory? A. With the exception of one city, it is entirely customary.

Q. And what city is that? A. Reading.

Q. How often do they change in Reading? A. Tri-weekly. 2

Q. How long has that condition of daily change of program obtained in your territory? A. Well, that was a gradual condition brought about—I think it began about—the latter part of 1907 or the early part of 1908, they began to clamor for daily change of program. Prior to that, everything had been a tri-weekly change.

Q. Now, does it often happen that your competitors get your customers from you? A. Yes, sir; we average about ten changes a week. Ten going and ten coming.

Q. Do you mean by that that ten of your customers who are taking the General Film service will leave you and go over and take independent service? A. Independent service. And ten that have been using independent service will come back to the General Film Company service. 3

Q. Has there been much variation in the number of customers served by the General Film Company in your territory in the last year or two? A. At the consolidation of the offices, which was, I think, about two years ago, we had about 300 customers, and we have 320 or 325 now.

Q. What is the practice in your territory as to making up a program for your exhibitors? What system of booking do you use? A. Well, we use a schedule system. We have a block system in which we block out the various territory, and divide the programs, if we have two competing houses, and if we have six reels of any one good make, we divide that, and give each exhibitor three of that make, and carry that out in that way all the way through. 4

Q. That is, exhibitors who are near each other? A. Exhibitors who are near each other, so that they will not have conflicting programs on the same dates, or so that they will

1 not repeat one after another. We will take, for example, two theatres on a given street that would be directly near each other, and give them each four reels of film, four thousand feet of film, every day, and have no danger of conflicting between the two houses at all by showing the same reels either on the same day, or at any time after each other.

Q. When a customer comes to you to be taken on, a new customer, does he indicate to you the character of service he wants; the kind of pictures, or does he have to take what you give him? A. No, sir. Very often a customer comes in to
2 us and asks for an early-run service, and a high-price service, that we know from past experience he cannot afford to carry along in a certain neighborhood, and very often I advise him to take a cheaper service.

Q. If he wants the higher priced service, you give it to him? A. Yes, sir.

Q. Do you find that exhibitors in your territory prefer to have you make up the program for them, or to make it up for themselves, as a general rule? A. Well, we generally handle them. They can always come in, and sometimes they may request a change. And we always
3 change them where it is practicable.

Q. These pictures are announced and advertised by the manufacturers long enough in advance to enable the exhibitor to know just what he is getting? A. Yes.

Q. And if he is dissatisfied with what you have given him, you give him something else? A. Yes. If he gets a scenic picture over the counter on a particular day, and he does not want it, we will give him a comedy, or some other picture, to balance his program, so as to make it acceptable to him.

4 Whereupon, at 4 o'clock P. M., on this Wednesday, the 3rd day of December, 1913, the hearings are adjourned until Thursday, December 4th, 1913, at 2:00 o'clock P. M., at the Manhattan Hotel, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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<div style="display: flex; justify-content: space-between;"><div style="text-align: center;"><p>UNITED STATES OF AMERICA, Petitioner,</p><p><i>v.</i></p><p>MOTION PICTURE PATENTS Co. and others, Defendants.</p></div><div style="font-size: 4em; line-height: 1; padding: 0 10px;">}</div><div style="text-align: left; padding-left: 10px;"><p>No. 889.</p><p>Sept. Sess., 1912.</p></div></div>	2
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NEW YORK CITY, December 4, 1913.

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., December 4, 1913, at Room 159, Hotel Manhattan, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

1 The following exhibits were returned to Mr. Charles F. Kingsley:

Defendants' Exhibit No. 121, being agreement dated December 12, 1900, between Armat Moving Picture Company and E. Burton Holmes.

Defendants' Exhibit No. 122, being agreement dated March 14th, 1902, between Armat Moving Picture Company and B. B. Lawrence.

2 Defendants' Exhibit No. 123, being copy of "Final Notice to Infringers of the Armat Patents," issued by Armat Moving Picture Company (without date).

Defendants' Exhibit No. 124, being pamphlet entitled "A Warning," (without date).

Defendants' Exhibit No. 125, being Circular letter dated March 25, 1902, addressed "To Exhibitors of and Dealers in Motion Picture Machines, Films and Supplies" and signed by "Armat Moving Picture Company."

3 Defendants' Exhibit No. 126, being paper entitled "Copy of Injunction Against Edison," with the date January 8, 1903.

Thereupon HARRY SCHWALBE resumed the stand.

Cross examination by Mr. GROSVENOR:

Q. Mr. Schwalbe, how many film exchanges were handling the output of the ten licensed manufacturers in the year 1910 in the City of Philadelphia? A. That was before the formation of the Patents Company, was it not, Mr. Grosvenor?

4 Q. Oh, no, that was two years after the formation of the Patents Company. A. After the formation of the Patents Company? In the early part of the year 1910?

Q. Or, in the year 1910, at about the time the General Film Company was organized? A. Four.

Q. Were all of those companies or exchanges acquired by the General Film Company? A. Three of them were.

Q. What was the fourth one? A. L. M. Swaab.

Q. What became of that exchange? A. We were notified that his license was cancelled.

Q. Was his license cancelled after the other three had
been acquired by the General Film Company? A. Yes, sir. 1

Q. You stated on direct examination that your company,
the Electric Theatre Supply Company, was a member of
the Film Service Association? A. Yes, sir.

Q. Did you attend the meetings of that association?
A. Yes, sir.

Q. At what place? A. I attended them at Pittsburgh
and Buffalo.

Q. What were the objects of the association? A. The
principal object appeared to be, or it was stated to us, at
least, that the object was to strengthen the market, and to 2
stop the unfair competition of exchanges who were import-
ing film and bringing it in ahead of films released in the
regular way by the then representatives of the foreign con-
cerns here. One of the objects appeared to be, to stop this.
We would buy films and find that someone had imported
that film before we got it and put it on the market, and
therefore it was valueless to us.

Q. And by "strengthening the market" you mean to im-
prove the business conditions? A. Yes, sir, so that a man
had some reasonable certainty of getting films that were 3
not released here before, and to improve business condi-
tions in other ways by placing standing orders, and also
there was some talk of license litigation—patent litigation,
on account of the then licensees.

Q. Were there any manufacturers present in the meet-
ing? A. In Pittsburgh, I don't remember that there were.
In Buffalo, yes.

Q. Who was present at Buffalo? A. Mr. Rock and Mr.
Lubin were two that I know of, or recollect, were present.
I don't remember any others.

Q. On direct examination you testified there was in 4
1906 competition between the licensed manufacturers in
your territory. Now, isn't it a fact that after the license
agreements were entered into, the prices at which the li-
censed manufacturers distributed their films were the same
for all of them?

Mr. CALDWELL: Objected to, on the ground that
the contract itself is in evidence and shows merely
that a minimum price was established.

- 1 The Witness: Before the manufacturers, or rather, before the Film Service Association was established, we got a certain price per running foot, according to the number of prints we purchased, and after that time there was a certain price per running foot to all exchanges who purchased one print. We always purchased one print, but we benefited previously to that time by dealing through jobbers. Sometimes we would go to a jobber who would purchase seven copies of, say, Pathe, at a time, and get it at seven cents, and dispose of it at seven and a half cents, or
- 2 eight and a half, or whatever he might be able to get, and if we purchased them at a profit, we would have to pay nine and a half, or ten cents, for example.

Q. So that after the license arrangement was entered into, you paid the same price for all films that you bought from the different manufacturers that were issued under the regular releases.

Mr. CALDWELL: Objected to, as leading. Let the witness state what price he paid.

- 3 The Witness: I understood that we paid the same price as all other exchanges.

By Mr. GROSVENOR:

Q. You paid the same price as the other exchanges? A. Yes, sir.

Q. Let me ask you—you have not answered my question yet: How many licensed manufacturers did you do business with after the Patents Company was organized? Did you do business with all of them? A. Yes, sir.

- 4 Q. In doing business with each of these licensed manufacturers, didn't you pay the same amount per reel for the regular releases of each manufacturer? A. Yes, sir.

Q. Then there was no competition in price, was there? A. No, not in price, but decided competition in quality.

Q. Then, when you testified on direct examination, on page 2140, and at other places, that there was competition between the licensed manufacturers, you didn't mean to have your testimony imply that there was competition between the licensed manufacturers as to the price of the reels? A. That is exactly what I meant, that there was

no competition as to the price of the reels, but there was competition as to the quality of the product, and I can explain that to you, if you like. 1

Q. Is there any way by which can be ascertained the number of theatres that are in the City of Philadelphia? A. Yes, sir.

Q. They are all licensed by the municipal authorities, are they not? A. Yes, sir.

Q. How many are there in the City of Philadelphia? A. The last record I have shows there were two hundred and eighteen in Philadelphia.

Q. When you testified on direct examination that there were seven hundred in your territory, you included what territory outside of Philadelphia? A. Delaware, Maryland, Eastern Pennsylvania, Southern New Jersey, and the independent theatres only in Virginia, I think—I don't believe I have a list of the licensed theatres in Virginia, but I have a circularizing list of seven hundred theatres which I use quite frequently in circularizing the trade in Virginia— 2

MR. CALDWELL: You mean the eastern shore of Virginia? 3

The Witness: I circularize into Virginia, Norfolk and Portsmouth—that is not on the eastern coast. We can reach Norfolk through or from Philadelphia better than from any other point that has an established exchange. The train connections are better.

By Mr. GROSVENOR:

Q. Have you secured this information as to the number of theatres in that territory from this circularizing list you have had? A. I have had that circularizing system in operation at least ten months, and we have gone over that circularizing list with the mail matter that was returned as improperly addressed, and a summary was arrived at from that and those that are correct are still on the list. 4

Q. Are any of those seven hundred theatres reached by the other branches of the General Film Company? A. Yes, sir.

1 Q. In what territory? A. Oh, in the District of Columbia, and on the eastern shore of Delaware and Maryland, and in the northeastern section of Pennsylvania.

Q. Then it may be that some of those seven hundred theatres which are not served by you, are served by other branches of the General Film Company? A. Yes, sir.

2 Q. You did not mean, then, in your testimony, to give the impression that the only theatres of the seven hundred in that territory which take the licensed service, were the three hundred and twenty served by you? A. There are considerably more than seven hundred theatres in that territory. To my knowledge, there are easily one thousand theatres in that territory, but I, naturally, do not carry on my circularizing list the customers that were supplied by other branches of the General Film Company.

Mr. GROSVENOR: Read the question to him.

The question was repeated by the Examiner as follows:

3 "You did not mean, then, in your testimony, to give the impression that the only theatres of the seven hundred in that territory which take the licensed service, were the three hundred and twenty served by you?"

The Witness: I know there are more than that.

By Mr. GROSVENOR:

4 Q. Now, these are the questions: "Q. (at page 2144, folio 2): And how many theatres altogether, motion picture theatres, are there in your territory? A. Seven hundred, about. Q. And of that number, how many are served by the General Film Company? A. Three hundred and twenty, today." You have now testified on cross examination that the three hundred and twenty, the number you gave, was the number of theatres served by your branch of the General Film Company. My question is a simple one, and it is this: Are any of the theatres making up the balance of that seven hundred served by other branches of the General Film Company? A. Very likely.

Q. Then you did not intend, in your testimony yesterday, to give the impression that the only theatres out of

the seven hundred theatres in your territory that were served by the General Film Company, are the three hundred and twenty served by your branch? A. Now, if you will let me explain, I can tell you. A circularizing list was gotten up ten months ago of the theatres in that territory in which three branches of the General Film Company practically came together at some point. Some of the theatres on that circularizing list would, therefore, be picked up by one or the other of the branches of the General Film Company, and probably, or most likely, some of them have applied to one or the other of our exchanges, so that, to be perfectly right in my answer, I do not say that some of these seven hundred theatres, except the three hundred and twenty we are supplying, are not supplied by some other General Film Company branch, and they probably are.

Q. Have you given all the explanation you want to give? A. Yes, sir.

Q. Let me return to the question, and the answer you gave to it; but, in the first place, yesterday you did not qualify your answer, or you did not indicate except that the three hundred and twenty theatres were served by your branch? A. I cannot speak of any other territory or branch very well. I have no knowledge of the company's business in general. I only have knowledge of the business of my own branch.

Q. You do not know how many of these seven hundred are served by the other branches of the General Film Company, do you? A. No.

Q. All you know is that of those seven hundred theatres, three hundred and twenty are served by your particular branch? A. Yes, sir.

Q. And you don't want your testimony to give the impression that all of the other theatres of the seven hundred are served only by the independents, do you? A. I feel that that is a correct statement, yes, sir.

Q. What is a correct statement? A. That the balance of these houses are served by the independent branches.

Q. What makes you feel that? A. Well, my general knowledge of the business, and the few changes, or the changes that are made one after another from the licensed faction to the independent faction, I having an idea of the purchases of both branches. Had their business materially

1 increased, either branch having taken away some of these seven hundred theatres, their purchases would have had to have been increased to take care of more business. Their purchases during these forty months have not increased, and therefore I am reasonably certain that that is correct.

Q. Mr. Schwalbe, I understood you to testify that some of these seven hundred theatres are served by other branches of the General Film Company? A. I said very likely. I don't know that, sir.

2 Q. Well, if you don't know whether or not they are served by the other branches of the General Film Company, you certainly don't know whether or not they are served only by the independents, do you? A. In the main, yes, I do.

Q. Where did you get this circularizing list upon which you base this number of seven hundred? A. From the Trade Circularizing & Addressing Company.

Q. What is that company? A. It is some company in Chicago, or St. Louis, I am not sure which, which makes a business of getting up circularizing lists for all kinds of businesses.

3 Q. Is that the same list of seven hundred used by other branches of the General Film Company? A. I don't know that. That was bought at my own initiative. I purchased it and got up a list of my own, without reference to any other branch.

Q. Do you have any list of the customers of the other branches of the General Film Company? A. I had such lists about a year ago, but I have none today that I know of.

Q. Are you the only branch of the General Film Company that does business in Harrisburg? A. Yes. Pardon me; I am wrong. The Wilkes-Barre branch has customers there.

4 Q. Are you the only branch of the— A. That should read—no, sir; the Wilkes-Barre branch always does business in Harrisburg, and—

Q. I am asking you another question. Let me complete my question. Are you the only branch of the General Film Company that does business in Wilmington? A. Yes, sir.

Q. Are you the only branch of the General Film Company that does business in Camden? A. Yes, sir.

Q. Now, you made this answer on direct examination, at page 2148: "Q. Do you find that exhibitors in your territory prefer to have you make up the program for them, or

to make it up for themselves, as a general rule?" And your answer was: "A. Well, we generally handle them. They can always come in, and sometimes they may request a change. And we always change them where it is practicable." As I understand your answer, the fact is that under the practice and method of doing business, as a general rule, the General Film Company makes up the program of the theatre or exhibitor? A. Where there is competition, as a rule,—if we have two or three customers in a given territory, I have conferences with, say, the three exhibitors, who then agree between themselves as to the division of the program. Where we have only one exhibitor, I have no trouble in laying out a program.

Q. And where two or three exhibitors disagree, you settle the question for them? A. Yes, sir, by having a conference with them, and in some cases I go out of town and settle the question with them.

Q. Are you interested in any theatres today? A. Yes, sir; I have a half interest in two theatres.

Q. And you are at the same time the branch manager of the General Film Company at Philadelphia? A. Yes, sir.

Q. The branch manager is the man that selects the reels from the different manufacturers? A. Yes, sir.

Q. Are there other managers or officials of the General Film Company interested in theatres? A. Not to my knowledge. I have no knowledge of any other manager or official of the General Film Company being interested in theatres.

Q. That is, you don't know whether they are or not; is that it? A. That is it, yes.

Q. Do you think it detrimental to the business to have a rental exchange manager or officer thereof interested in a theatre? A. I do. I might say now that I had twelve theatres at one time, and I have disposed of them gradually, as opportunity presented itself, on account of that very fact.

Q. Is Mr. Lubin interested in theatres? A. Not to my knowledge, sir.

Q. Mr. Schwalbe, would you object, for the purpose of assisting the Government in further cross examination, if it deems it necessary, to producing for inspection, that circularizing list of the seven hundred theatres? A. No; I will do that at any time. I have that circularizing list, and I have had addressing plates made, and I have a regular ad-

1 dressing machine, and used that for the purpose of circularizing.

Q. I meant would you object to producing the list? I do not want you to go to any trouble, or to trouble you to copy anything. You possibly have several copies of it? A. I don't think I have, but I have at least one copy, which I can produce at any time.

Q. I won't ask you to send it. Possibly we can arrange for Mr. Darling to call and see it at some time. A. At any time.

2

Thereupon, THOMAS ARMAT resumed the stand.

Direct examination continued by Mr. KINGSLEY:

Q. Were you familiar with the financial condition of the Armat Moving Picture Company from 1900 up to and including 1908? A. I was, entirely.

Q. What was the financial condition of the Armat Moving Picture Company during that period? A. Up to 1902 the financial condition of the company was very good. From
3 some time in 1902, up to 1908, it was not very good.

Q. And what do you mean by "it was not very good?" Was it in straits for money? A. It was compelled to borrow money.

Q. Do you have in mind any one purpose for which it borrowed money?

Mr. GROSVENOR: I object to this as immaterial, and too indefinite in time, the same referring to a period of six years preceding the formation of the Patents Company, and therefore the testimony should be given
4 some date.

The Witness: Yes, we borrowed money for the purpose of carrying on litigation.

By Mr. KINGSLEY:

Q. Was this litigation in reference to any patent? A. It was in reference to Patent No. 586,953, particularly.

Q. How much money did you borrow for the purpose of carrying on litigation with reference to Patent No. 586,953?

Mr. GROSVENOR: I make the same objection to this question. 1

The Witness: We first borrowed three thousand dollars—

Mr. GROSVENOR: I make the same objection to this question, that it is immaterial, primarily on the ground that no date is given, which makes the testimony misleading, even if it were relevant.

The Witness: We first borrowed, some time in 1903, three thousand dollars, and I, personally, advanced the company some money about that period; and we borrowed in January of 1906 from one of our Directors ten thousand dollars. 2

By Mr. KINGSLEY:

Q. Which one of the Directors was it from whom you borrowed the ten thousand dollars? A. Mr. C. E. Wood, of Wood, Harmon & Company.

Q. What year was it you borrowed that \$10,000? A. January, 1906. 3

Q. Was this money expended in litigation under the projecting machine patent 586,953? A. It was, very largely.

Q. Did the financial condition of the Armat Moving Picture Company permit of a larger expenditure in litigation during the period to which I have referred? A. It did not.

Q. I show you the original of an agreement between the Armat Moving Picture Company, of Washington, D. C., and the American Mutoscope & Biograph Company, of New Jersey, dated February 19th, 1904, and referred to by the witness Marvin, at page 146 of the printed record, and ask you if you recognize it? A. I do. 4

Q. Did the Armat Moving Picture Company execute that agreement? A. It did.

Q. By what officer? A. By myself, as President.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I enter objection on the ground that the document has no relation to, or bearing upon, any of the issues in this case, the same having been entered into at a date more than four years prior to

1 the formation of the Patents Company, and that agreement expired long before the formation of the Patents Company.

The paper offered is received in evidence and marked by the Examiner, "Defendants' Exhibit, No. 127," and is as follows:

Defendants' Exhibit No. 127.

2 THIS AGREEMENT made this 19th day of February, 1904, by and between the ARMAT MOVING PICTURE COMPANY of Washington, D. C., party of the first part, hereinafter called the first party, and the AMERICAN MUTOSCOPE & BIOGRAPH COMPANY of New Jersey of the second part, hereinafter called the second party, WITNESSETH as follows:

WHEREAS the first party now owns and controls United States patent #586,953 dated July 20, 1897 to C. F. Jenkins & Thomas Armat, and

3 WHEREAS the second party desires to acquire a license not an exclusive license, under said patent to manufacture and use, and under certain conditions only to sell machines under said patent,

4 NOW THEREFORE in consideration of the sum of One Dollar paid by the second party to the first party, the receipt of which is hereby acknowledged, and for other good and valuable considerations, the party of the first part hereby agrees to grant and does hereby grant and convey to the second party, a license but not an exclusive license, to manufacture and use and under certain conditions hereinafter set forth to sell machines manufactured under said patent during the life thereof, upon the following terms and conditions:

1. The second party agrees to pay to the first party, as a royalty, a sum equal to ten (10%) percent of the net profits derived by the second party from the use or sale of machines manufactured used or sold by the second party under said patent, and embodying the invention covered by said patent, but in no event shall the second party be called upon to pay to the first party, a sum greater than Ten (\$10.) Dollars per week for the use of any one machine used by or for the first party.

2. The second party shall only be privileged under this license to sell machines hereunder in the event that the machines under the above patent are sold or permitted to be sold by the first party, or by written permission of the first party.

3. The second party shall keep true and accurate books of account showing the gross receipts and net profits derived from the use or sale of machines manufactured used or sold for them or by them under said patents. These books of account shall be open to the inspection of the first party at all reasonable times and the second party shall render to the first party quarterly, true statements showing the amount of the gross receipts derived as above specified, together with the net profits derived from such sources, and shall pay on the twentieth day following the end of each quarter by New York exchange, at the office of the first party in Washington, D. C. without demand all royalties accruing during the preceding quarter.

4. If the second party shall refuse or fail to keep accounts as herein provided, or if it shall refuse or fail to permit the inspection thereof by the first party's agent or agents as hereinabove provided, and if the default shall continue for sixty (60) days after any date of payment as provided above and after demand therefor by the party of the first part; then the first party or its assigns may revoke this license and all rights of the second party therein by giving written notice to that effect.

5. In the event of the forfeiture of this license as above provided, any accrued liability of the second party hereunder to the first party shall remain unimpaired and the second party shall have the privilege of disposing of any goods manufactured under the above patent and held by them at the time of termination provided however that the first party shall have the first privilege of taking such goods off the hands of the second party at cost price.

IN WITNESS WHEREOF the party of the first part has caused these presents to be executed by its President, and its corporate seal to be affixed this 19 day of February, 1904 and the party of the second part has caused

- 1 these presents to be executed by its President the 19 day of Feby., 1904, in duplicate.

ARMAT MOVING PICTURE COMPANY,

Thomas Armat,
President.

In presence of

J. W. CAMPBELL,

MAUD E. KRAEMER.

AMERICAN MUTOSCOPE & BIOGRAPH CO.,

H. N. Marvin,
Pres.

- 2 In presence of
DRURY W. COOPER.

By Mr. KINGSLEY:

Q. I show you a letter addressed to "Mr. H. N. Marvin, Trustee," and signed, "Armat Moving Picture Company, Thomas Armat, President," and attached to Defendants' Exhibit, No. 127, and ask you if you recognize it? A. I do.

- 3 Q. Was that letter sent by the Armat Moving Picture Company on or about the date set out in the letter? A. It was.

Mr. KINGSLEY: I offer it in evidence.

- 4 Mr. GROSVENOR: I object to its admission on the same grounds as stated above against the admission of the exhibit last produced and introduced by defendants, and on the further ground that this letter has written across it the words "Cancelled September 17th, 1904. Armat Moving Picture Company, by Thomas Armat, President," and these words, which are a part of the exhibit, show that under its terms the contract expired more than four years prior to the formation of this alleged unlawful combination, and therefore it can have no bearing upon any of the issues in this case.

The paper offered is received in evidence and marked by the Examiner, "Defendants' Exhibit, No. 128," and is as follows:

Defendants' Exhibit No. 128.

1

Mr. H. N. Marvin, Trustee,

Dear Sir:—

In view of certain representations made to us by you and Judge Campbell and certain assurances that have been made to us that the parties holding a majority of the stock of the American Mutoscope & Biograph Company are willing and desirous to exchange their interests for interests in a new company whose organization is contemplated, which new company is also to secure control of the Armat Co., and in order to provide against loss or damage to the Mutoscope Co., in the event that in spite of the co-operation of the said majority of stockholders of the Mutoscope Co. it shall be found impossible or impracticable to effect the reorganization and combination above referred to, we have this day executed in favor of the American Mutoscope & Biograph Co., the attached license under the Armat patent, which license we now hand to you herewith to be held in trust by you as Trustee, to be delivered to the American Mutoscope & Biograph Co. only in the event (1) on the dismissal of the appeal of such patent now before the Court of Appeals or the affirmation of the judgment of the lower court in favor of the Armat Co., and (2) in the event of the impossibility or impracticability of the reorganization and combination above referred to, provided that said reorganization and combination does not fail through lack of such co-operation and assistance as has been promised you by the holders of the majority of the stock of the American Mutoscope & Biograph Co., but in the event that the above mentioned reorganization and combination shall fail through obstacles interposed by the holders of the stock of the Mutoscope Co. or any of them, or by their refusal or failure to carry out the promises and representations that have been made to you in connection with said reorganization, then in that event only, this license

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3

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- 1 shall not be delivered to the Mutoscope Co., but shall be returned to us for cancellation.

Very truly yours,

ARMAT MOVING PICTURE CO.

Thos. Armat, President.

In duplicate.

Trust accepted,

H. N. MARVIN.

- 2 Written across face: Cancelled Oct. 17th, 1904, Armat Moving Picture Co., by Thos. Armat, Pres.; H. N. Marvin, Trustee.

By Mr. KINGSLEY:

- 3 Q. I show you a paper attached to Defendants' Exhibit, No. 127, and Defendants' Exhibit, No. 128, dated October 17th, 1904, signed "Armat Moving Picture Company, by Thomas Armat, President; and American Mutoscope and Biograph Company, by H. N. Marvin, President," and ask you if you recognize it? A. I do.

Q. Did you execute that paper on behalf of the Armat Moving Picture Company? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the same objection to the admission of this exhibit.

The paper offered is received in evidence and marked, "Defendants' Exhibit No. 129," and is as follows:

4

Defendants' Exhibit No. 129.

In consideration of the delivery of the foregoing license, and of the withdrawal by the American Mutoscope & Biograph Company of the appeal perfected by it and now pending in the United States Circuit Court of Appeals for the Second Circuit from the decree of the Circuit Court adjudging Patent No. 586,953 to be valid and to have been infringed, and in consideration of the settlement of the said litigation,

the parties thereto hereby further agree that the provisions of the said agreement regarding the payment of license fees, the keeping of books of account, the penalty for failure to keep account and for default in payment, shall not become binding upon the American Mutoscope & Biograph Company, until and in the event that a decree unappealed from within the statutory period, or affirmed or entered under the direction of the United States Circuit Court of Appeals, shall have been entered declaring the aforesaid patent valid, and infringed by Thomas A. Edison's moving picture apparatus;

And it is further agreed that should the said provisions of the said agreement become effective, the American Mutoscope & Biograph Company shall at all times be entitled to the most favorable terms given to other licensees under the aforesaid patent, and that the said agreement shall be construed to that effect.

In witness whereof the parties have executed these presents in the same manner as the foregoing agreement was executed, on the 17th day of October, 1904.

ARMAT MOVING PICTURE CO.

by

Thos. Armat, Pres.

AMERICAN MUTOSCOPE & BIOGRAPH CO.

H. A. Marvin, Pres.

Witness as to both signatures,

DRURY W. COOPER.

By Mr. KINGSLEY:

Q. I show you a memorandum of an agreement made March 21st, 1908, between Armat Moving Picture Company and American Mutoscope and Biograph Company, executed by Armat Moving Picture Company, by Thomas Armat, President, and by American Mutoscope and Biograph Company, by H. N. Marvin, Vice-President, and ask you if you recognize it? A. I do.

Q. Did the Armat Moving Picture Company execute this contract by you as President? A. It did.

Mr. KINGSLEY: I offer it in evidence.

- 1 The paper offered is received in evidence and marked, "Defendants' Exhibit, No. 130," and is as follows:

Defendants' Exhibit No. 130.

2 MEMORANDUM OF AN AGREEMENT made this 21st day of March, 1908, between ARMAT MOVING PICTURE COMPANY, a corporation organized and existing under the laws of the State of West Virginia, party of the first part, and AMERICAN MUTOSCOPE & BIOGRAPH COMPANY, a corporation organized and existing under the laws of the State of New Jersey, party of the second part,
WITNESSETH:

WHEREAS the party of the first part is the owner of certain letters patent of the United States relating to devices for projecting motion pictures, to wit:

No. 578,185, dated March 2, 1897, for Vitascope, granted to Thomas Armat;

- 3 " 580,749, dated April 13, 1897, for Vitascope granted to Thomas Armat;

" 586,953, dated July 30, 1897, for Phantoscope, granted to Charles F. Jenkins; and Thomas Armat;

" 588,916, dated August 24, 1897, for Kenetoscope, granted to Willard G. Stewart and Ellis F. Frost;

" 673,992, dated May 14, 1901, for Vitascope, granted to Thomas Armat, and

- 4 WHEREAS the party of the second part has heretofore been licensed by the party of the first part to use the invention of said letters patent No. 586,953, as evidenced by certain instruments in writing dated respectively the 19th day of February, 1904, and the 17th day of October, 1904; and also to use the invention of said letters patent No. 588,916, as evidenced by certain instruments in writing dated the 23rd day of June, 1903; both of said licenses being restricted and non-exclusive; and

WHEREAS the party of the second part is the owner of certain letters patent of the United States relating to devices for taking and projecting moving pictures, to wit:

No. 707,934, dated Aug. 26, 1902, for Projecting Kinetoscope, granted to Woodville Latham; 1

“ 722,382, dated Mar. 10, 1903, for Projecting Kinetoscope granted to John A. Pross;

and

WHEREAS each of the parties hereto desires to obtain for itself a license to manufacture and sell motion picture apparatus containing or embodying the inventions of the aforesaid letters patent owned by the other party or some of them, upon the terms and conditions hereinafter set forth; and 2

WHEREAS both parties desires that all unauthorized manufacture, use and sale of the inventions of the aforesaid letters patent and all infringement upon the said letters patent shall be made to cease;

NOW THEREFORE, in consideration of the sum of One Dollar (\$1) by each of the parties to the other in hand paid, and in consideration of the premises, terms and conditions hereof, and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the parties hereto do hereby agree as follows, to wit: 3

1. It is mutually agreed that the license agreements heretofore existing and above referred to with respect to letters patent numbers 586,953 and 588,916, shall be, and they are hereby, in all respects suspended during the term of the present agreement, or during the operation thereof by virtue of any prolongation or extension by the act or sufferance of the parties hereto, or their or either of their successors or assigns; and that at the end of the term of the present agreement or upon the termination or expiration of the present agreement from any cause or at any time whatsoever, the beforementioned license agreements shall forthwith come again into full force and affect the same as if the present agreement had not been made. 4

2. It is mutually agreed that this agreement shall be and remain in full force and effect for a period of ten (10) years from the date thereof and shall thereupon terminate, unless extended by the affirmative act of the parties hereto or by the operation of law.

- 1 3. The party of the first part hereby licenses the party of the second part, its successors and assigns, to manufacture and sell subject to the provisions of the 11th and 12th paragraphs hereof moving picture apparatus embodying the inventions set forth in the following letters patent, or any of them, to wit:

No. 578,185, dated Mar. 2, 1897, for Vitascope, granted to Thomas Armat;

“ 580,749, dated Apr. 13, 1897, for Vitascope, granted to Thomas Armat;

- 2 “ 586,953, dated July 20, 1897, for Phantoscope granted to Charles F. Jenkins; & Thomas Armat;

“ 588,916, dated Aug. 24, 1897, for Kinetoscope, granted to Willard G. Stewart & Ellis F. Frost;

“ 673,992, dated May 14, 1901, for Vitascope, granted to Thomas Armat.

- 3 4. The party of the second part hereby licenses the party of the first part, its successors and assigns, to manufacture and sell subject to the provisions of the 11th and 12th paragraphs hereof moving picture apparatus embodying the inventions set forth in the following letters patent, or either of them, to wit:

No. 707,934 dated Aug. 26, 1902, for Projecting Kinetoscope, granted to Woodville Latham;

“ 722,382, dated March 10, 1903, for Projecting Kinetoscope, granted to John A. Pross.

- 4 The party of the second party hereby agrees that, in granting licenses for the use of projecting machines, it will not impose restrictions as to the use of films of its manufacture, or of the manufacture of other parties, controlled by it, detrimental to the party of the first part.

5. The parties hereto severally agree that for the purpose of enforcing the payments of royalty by users of machines covered by the patents hereinbefore mentioned, or any of them, or for any other of the purposes of this agreement, they will authorize and direct their respective officers to execute and deliver the necessary papers for instituting suits for infringements, upon the written request of the other party.

6. The party of the second part agrees that it will, at its own expense, under its own direction, and through counsel acceptable to the party of the first part, and in the name of the party of the first part, prosecute actions for infringement of the patents hereinbefore described as belonging to the party of the first part; the said party of the second part reserving to itself the right to select the person or persons to be sued for infringement, the patent or patents, upon which suit is to be brought, and also reserving to itself the right to prosecute in similar manner and under similar conditions, any litigation heretofore brought by the party of the first part and pending at the date of this agreement; excepting, however, that nothing herein contained shall preclude either party from suing at its own expense any infringer without the consent of the other party, provided written notice thereof be first given to such other party; in which event such other party may, at any time prior to the settlement or termination of such litigation, participate therein.

7. The party of the first part hereby covenants and agrees that it will grant licenses, rights and privileges for the mutual benefits of the parties hereto under any of the patents hereinbefore described as belonging to the said party, upon the written request of the party of the second part, and not without the written consent and approval of the party of the second part. The party of the first part further covenants and agrees that it will not compromise, terminate or otherwise satisfy or settle, in whole or in part, any cause of action now existing or that may hereafter arise with reference to any of the patents hereinbefore described as belonging to the said party of the first part (whether or not such cause of action be now or hereafter the subject of litigation) except upon the written consent of the party of the second part.

8. It is mutually agreed by both of the parties that from any recoveries of damages or profits or costs from infringers; or from any payments or royalties or license fees by anyone hereafter to be licensed by the party of the first part under any of the aforesaid letters patent; or by the party of the second part under any of its aforesaid letters patent; or from any payments received in settlement of any cause or causes of action against infringers of said

1 patents; there shall be first paid to the party of the second
part all the expense incurred by it in connection with the
enforcement or assertion of any of the patented rights here-
inbefore referred to, in the mutual interest of the parties
hereto whether by the commencement and prosecution of
litigation or otherwise; and to the party of the first part
the sum of Twenty Three Hundred Dollars (\$2300.00),
being part of the expense heretofore incurred by said party
in a certain litigation now pending against Edison Manufac-
turing Company for infringement of said letters patent
2 No. 586,953; and there shall also be paid to either of the
parties any expense that it may hereafter incur in the mutual
interest of the parties hereto in acquiring any outstanding
interest in any of the patents now or hereafter made the
subject of this agreement; and the remainder, if any, of
such avails shall be equally divided between the parties
hereto. It is further mutually agreed that the payments
from licensees or infringers specified in this section, shall
be made to the party of the second part or its nominee
and that quarterly settlements in respect thereof, shall be
made between the party of the second part and the party
3 of the first part, commencing on the 1st day of August,
1908, for the period ending July 1st, 1908, and thereafter
every three months, with the usual provisions for inspec-
tion of books and keeping of account; it being understood
and agreed that all litigation is to be conducted with due
regard to economy, and, having in view the mutual and
equal benefit of the parties hereto.

9. It is further mutually agreed by both of the parties
hereto that in the event of any combination or pooling of
interests with the Edison Manufacturing Company whereby
4 the patents hereinbefore referred to are joined with the
patent or patents relating to moving picture film, and to
camera patent owned by said Edison Manufacturing Com-
pany and by the party of the second part hereto, the share
of the party of the first part in any avails or proceeds of
such combination shall be not less than one-half ($\frac{1}{2}$) as
much as the share of the party of the second part hereto.

10. It is further mutually agreed by both of the parties
hereto that any other patents or improvements or interests
in any patents or improvements on projecting machines

now owned or hereafter acquired, in whole or in part by either of the parties hereto shall forthwith become subject to this agreement, and the licensees hereinbefore given by such party at once upon such acquisition be made and considered to apply to such patent or improvement.

11. It is mutually and severally agreed by both of the parties hereto that a royalty equal in amount to one-half of the royalty hereafter required to be paid by others for the manufacture and sale of projecting machines, shall be paid by either party hereto that may hereafter manufacture, to the other, in full settlement of license fees hereunder, subject however to the following conditions; that settlements shall be made on or before the 31st day of January of each year for the business of each preceding calendar year, and that every machine sold or leased by either party shall be sold or leased upon the same terms with respect to use as shall hereafter be established by the parties for the use of projecting machines manufactured by others.

12. It is further mutually agreed by both of the parties hereto that neither party shall hereafter grant any license to manufacture, sell or use any projecting machine embodying any of the inventions hereinbefore referred to, except upon such terms and conditions as shall be hereafter agreed upon by both parties hereto. It is further mutually agreed that, in the event the parties are unable to agree upon such terms and conditions, or upon any other question arising hereunder, such disagreement shall be submitted to three arbitrators one to be selected by each party hereto and the other by the two arbitrators thus selected, whose decision shall be rendered as promptly as possible and shall be final and binding upon the parties.

13. It is mutually understood and agreed by both of the parties hereto that the provisions of this agreement shall be limited to projecting machines.

14. It is mutually understood and agreed that the provisions of this agreement shall extend to and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF the parties hereto have

- 1 caused their respective common seals to be hereunto affixed and the signatures of their respective Presidents (or Vice-Presidents) and Secretaries to be hereunto subscribed, the day and year first above written.

Signed, sealed and delivered
in the presence of:

ARMAT MOVING PICTURE COMPANY,
[SEAL.] By Thos. Armat,
President.

2 AMERICAN MUTOSCOPE & BIOGRAPH COMPANY,
By H. N. Marvin,
[SEAL.] Vice-President.
Attest: James A. Gausman,
Secretary.

By Mr. KINGSLEY:

- 3 Q. I notice in this agreement which you have just identified, which is marked Defendants' Exhibit 130, that there is a provision for the payment to the party of the first part of the sum of \$2,300, being part of the expense heretofore incurred by said party in a certain litigation now pending against Edison Manufacturing Company, for the infringement of said Letters Patent No. 586,953. Did the sum of \$2,300 represent the total expenditure that the Armat Moving Picture Company had incurred in prosecuting its litigation with the Edison Manufacturing Company? A. It did not.
- 4 Q. What sum was expended, and you may answer approximately, in prosecuting the litigation of the Armat Moving Picture Company against the Edison Manufacturing Company with respect to Patent No. 586,953?

Mr. GROSVENOR: Objected to as immaterial, and relating back to a time too remote, and having no bearing upon the issues .

The Witness: Approximately \$5,000.

By Mr. KINGSLEY:

1

Q. Was such litigation going on at the time of the execution of this agreement marked Defendants' Exhibit 130, which you have just identified? A. It was.

Q. Now, Mr. Armat, in prosecuting infringers of Patent No. 586,953, what manufacturing companies were the chief offenders? A. The Edison Manufacturing Company.

Q. And did you find that most of the infringing machines were manufactured by the Edison Manufacturing Company? A. We did.

Q. In prosecuting infringements of Patent No. 586,953, did you find that the infringers were being aided or assisted by any manufacturing company? 2

Mr. GROSVENOR: I object to the question as too general, and relating to a period of too long a duration, so that the answer cannot be of any value, and I request that the time be specified more particularly.

The Witness: We did. As I recall the facts, in the first suit filed against Chase in Washington, the Biograph Company undertook to defend the suit, because Chase was using their machine. 3

By Mr. KINGSLEY:

Q. That was the P. B. Chase to whom you referred yesterday? A. Yes.

Mr. GROSVENOR: And this suit having been brought in 1901, as was testified to by the witness, I move to strike out the answer on the ground that it is too remote to have any bearing. 4

The Witness: In the second suit filed against Chase, he was using an Edison machine, and the Edison Company undertook to defend the suit.

Mr. GROSVENOR: Same objection, the testimony of the witness showing that that suit was brought six or seven years prior to the formation of the Edison Licensees' Association.

- 1 The Witness: In the suit brought against Baum, he was using a Powers machine, and after the suit was filed, he substituted an Edison machine, and the Edison Company undertook to defend that suit.

Mr. GROSVENOR: Same objection, said suit relating to the same period.

- 2 The Witness: The same was true in the suit against the Interstate Amusement Company. They were first using a Powers machine, and substituted an Edison machine, and the Edison Company undertook to defend the suit.

Mr. GROSVENOR: Same objection.

The Witness: Both of these suits were filed in 1907.

Mr. GROSVENOR: These last two suits?

The Witness: Yes.

- 3 Cross examination by Mr. GROSVENOR:

Q. Mr. Armat, you have produced quite a number of contracts and licenses here, most of them dating back to 1901 and 1902. It is a fact, is it not, that you had some correspondence with Mr. Marvin in the Summer and Fall of 1908, relating to the formation of the Patents Company? A. I had some interviews with Mr. Marvin and possibly some correspondence.

- 4 Q. Well, isn't it a fact that you did have some correspondence with Mr. Marvin in the Fall or late Summer, or possibly the Winter of 1908, in regard to the formation of the Patents Company, or if not in regard to the formation of the Patents Company, in regard to the execution of these various agreements which were executed on December 18th, 1908? A. I think it is very likely that we did.

Q. I am asking you whether it is not the fact that you did have correspondence with Mr. Marvin? A. I cannot answer positively because, as I stated, we had a number of interviews, and we might have accomplished

all that otherwise might have been accomplished in writing, by such interviews. 1

Q. Where did you get these old papers, for instance, the contract, running back to 1901, with Burton Holmes? A. I found it among my papers in Washington.

Q. And you searched through your papers to find it? A. I did.

Q. Did you make any search to find whether there were more recent papers or correspondence between the parties engaged in the motion picture business? A. Do you refer to Burton Holmes or to others? 2

Q. Read the question to him.

The Examiner repeats the question to the witness as follows:

“Q. Did you make any search to find whether there were more recent papers or correspondence between the parties engaged in the motion picture business?”

The Witness: I made no search, as I recall it, for papers, except such as related to suits and licensees. 3

By Mr. GROSVENOR:

Q. In searching for such papers as you have described in your last answer, did you run across any letters of more recent date than those between your company and Burton Holmes? A. I ran across some letters from Burton Holmes which I have with me, and some letters to and from a number of infringers, which I have with me.

Q. Did you run across any correspondence between yourself and Mr. Marvin, exchanged in the Summer or Fall of 1908? A. I did not look for any. 4

Q. I did not ask you whether you looked— A. Nor did I run across any.

Q. And you made no search for any? A. I did not.

Q. What made you think that the Burton Holmes contract of ten years ago was more material than correspondence between you and Mr. Marvin in the Summer of 1908?

Mr. KINGSLEY: I object to the question as calling for a conclusion and a characterization by the

- 1 witness, and asking him to comment upon his own testimony.

The Witness: I understood in a general way that I was to testify as to suits and the conduct of the Armat Moving Picture Company in relation to such suits, and I confined my search to papers of that character.

By Mr. GROSVENOR:

- 2 Q. What is that letter-press copy book which you have beside you? A. That is an old copy book of the Armat Moving Picture Company running from the latter part of 1901, I think, to 1903.

Q. Did you bring a letter book relating to 1908, and the Summer and Fall of 1908, along with you? A. As a matter of fact, during that period we had no letter book. Our practice was to make carbon copies, and they were kept in files. The letter book that I have with me is the last letter book that we kept.

- 3 Q. You did not bring along with you, then, any correspondence of 1908? A. I did not—oh, I beg your pardon. I did not bring in any correspondence of that period between Mr. Marvin and myself, but I did bring some correspondence about that period between myself individually and some film exchanges from whom I was getting film service in 1908 and 1909.

Mr. KINGSLEY: Were you asked by the petitioner to produce any of the correspondence to which the attorney for the Government has just referred?

- 4 The Witness: I was not.

Mr. GROSVENOR: Mr. Armat, I am not trying to give the impression that you have held back something that I have wanted. You understand that.

The Witness: Yes.

Mr. GROSVENOR: I am trying to find out why you bring matters or papers that are ten years old instead of things that may be material and recent.

By Mr. GROSVENOR:

1

Q. Now, look at Volume 1, page 234, the same being Exhibit No. 65, a letter dated January 30th, 1908, addressed by you to Mr. H. N. Marvin. Read that and see if that refreshes your recollection.

Mr. KINGSLEY: I object to the question as not proper cross examination, incompetent, immaterial and irrelevant.

Mr. GROSVENOR: Let me state the purpose of this line of questioning. It is evident that the entire testimony of the witness as produced by defendants, is to show that there was litigation involving patents, which was the cause of the formation of the Patents Company, or which governed their intent. The purpose of this cross examination is to show that there were other papers not produced, and that the witness took part in negotiations, and is not called upon to testify of his own knowledge as to any of these matters, which are direct and material.

2

By Mr. GROSVENOR:

3

Q. Now, witness, does that refresh your recollection as to whether or not you and Marvin did have correspondence in the Summer and Fall of 1908 in regard to this formation of this licensing arrangement? A. I have read the letter, and I have no doubt that it is a copy of a letter written by me to Mr. Marvin on the date printed, July 30th, 1908.

Q. Kindly look at Petitioner's Exhibit 66, being on the next page, and being a copy of a letter dated October 5th, addressed to you, the same being a letter written by Mr. Marvin? A. I do not recall the letter referred to as addressed to—

4

Q. You mean the letter that Mr. Marvin states he is sending you? A. Yes. But I have no doubt this is a copy of a letter written by me at the date printed, October 5th, 1908.

Mr. KINGSLEY: Do you think you wrote it or that you received it?

The Witness: Oh, that I received it, I should say.

1 By Mr. GROSVENOR:

Q. How many times have you testified in patent suits?

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, and not proper cross examination, as embracing new matter.

The Witness: Several times.

By Mr. GROSVENOR:

2 Q. When did the Biograph Company acquire an interest in the Armat Company? A. If I understand your question, it never did.

Q. When did the principal owners in the Biograph Company, or the American Mutoscope Company, being its earlier name, acquire an interest in the Armat Company?

Mr. KINGSLEY: I object to the question as incompetent, immaterial and irrelevant, and not proper cross examination.

3 The Witness: I think Mr. Marvin, who was connected with the Biograph Company, and Mr. Kennedy, who, I believe, was connected with the Biograph Company—acquired a small interest in the Armat Moving Picture Company by a purchase of stock in 1909 or 1910.

By Mr. GROSVENOR:

Q. Wasn't it earlier than that? Wasn't it before the formation of the Patents Company? A. Possibly it was.

4 Q. I am not asking you "possibly." Isn't it true that Marvin and Kennedy acquired an interest in the Armat Company before the Patents Company was organized? A. I am not sure, but I am inclined to think it was.

Q. Did they acquire an interest in your company before the Edison Licensees' Association was formed? A. I think so.

Q. Did they become the principal owners of the company? A. They did not. They acquired about a thousand shares each out of fifty thousand shares.

Q. Were you the principal owner? A. I was.

Q. How many projecting machines did the Armat Company sell from 1900 down to December, 1908, when the Patents Company was organized? A. It never sold a single machine at any time or at any price. 1

Q. How many machines had it leased or licensed the use of under its patents from 1900 down to December, 1908? 2

A. Very few, for the reason that numbers of manufacturers of infringing machines were selling machines outright without any restrictions as to the payment of license. The policy of our company from its date of formation, was not to sell machines, because to do so, we would have been compelled to sell in competition with our infringers. We found it very difficult to lease machines, for that reason, that they could purchase without any restrictions, machines from infringing manufacturers.

Q. Whatever the reason, the fact is that in December, 1908, a very small number of machines were in use which had been licensed by you? A. That is correct.

Q. Were there as many as a score of machines in use at that time, licensed by your company? A. There were not.

Q. Were there ten, do you think? A. I do not think there were any. 3

Q. In December, 1908, there were in the United States at least 5,000 or 6,000 theatres exhibiting motion pictures, and possibly more than that, weren't there? A. All of which were infringing our patents.

Q. There were, in December, 1908, five or six thousand theatres or more than that, which were exhibiting motion pictures? A. I expect that is a correct statement.

Q. That means, then, that there were in use in the United States in December, 1908, at least five or six thousand projecting machines? A. I guess that is correct. 4

Q. Now, who had been the principal vendors of those projecting machines? A. The Edison Manufacturing Company and the Powers Company, I think, were the principal ones.

Q. And those machines had been sold, as I understand your testimony, outright; that is to say, without conditions to the purchasers of the same? A. I presume so.

Q. You introduced in evidence during your direct examination, Mr. Armat, an injunction issued in your favor against the Edison Company, dated January 8th, 1903, 5

- 1 by the District Court, Southern District of New York. Did the Edison Company continue to manufacture and sell projecting machines after the issuance of that injunction? A. I think not, until June of 1903. They appealed from the injunction, as I recall it, raising the question of title. Judge Lacombe refused to release them from the injunction under any such plea, and they appealed to the Court of Appeals, which, as well as I recall the facts, decided in substance that there was some question of title, and that the question should be settled at final hearing, and, pending such hearing, the Edison Company put up a bond, and were released from the injunction.
- 2

Q. You did not intend, then, by your testimony on direct examination respecting that injunction, to give the impression that the injunction was a permanent one and issued after final hearing?

Mr. KINGSLEY: I object to that as incompetent, immaterial and irrelevant; the testimony and the injunction speak for themselves.

- 3 The Witness: I did not.

By Mr. GROSVENOR:

Q. Had there been any final adjudication on the merits and the testimony in that case, up to December, 1908, nearly six years later, when the Patents Company was organized? A. There had been a great mass of testimony taken and, as I recall it, the case was ready for hearing at that time.

- 4 Q. Had there been any final adjudication on the merits and on the testimony taken in that case, up to December, 1908, when the Patents Company was organized? A. There had not.

Q. That is to say, a period of nearly six years had elapsed? A. That is correct, during most of which time we were—during a great deal of which time, we were taking testimony in that case.

Q. How much testimony was taken? A. About as much, if not a little more, than was taken in the case of the Armat Moving Picture Company against the Biograph Company.

Q. How much testimony was taken, then, in that period of six years in your suit with Edison? A. I should say that, if that testimony was printed, it would make a volume on a size of paper upon which the testimony in this case is printed, about four or five inches thick.

Q. Dependent on the thickness of the paper? A. Well, somewhat, yes.

Q. That is to say, in your judgment, several hundred pages or more of printed testimony had been taken? A. Yes, sir. Considerably more, I should say.

Q. Had briefs been written? A. I believe not.

Q. How many witnesses had been called? A. A dozen or more, I guess.

Q. That is to say, an average of two witnesses a year? A. That is one way of putting it.

Q. Now, in view of these facts, do you wish to change in any way the answer you gave on direct examination, at page 2137: "By Mr. Kingsley: Q. Was the litigation between the Armat Moving Picture Company and the Edison Manufacturing Company actively prosecuted? A. It was." A. No, I do not wish to change my answer.

Q. Your experience in litigation is, that if two witnesses a year are called in a suit, the suit is being actively prosecuted; is that correct?

Mr. KINGSLEY: I object to the question as incompetent, immaterial and irrelevant, and argumentative and calling for a conclusion of the witness, and for a characterization of the evidence already given.

The Witness: Read the question, please.

The Examiner repeats the question as follows:

"Q. Your experience in litigation is that if two witnesses a year are called in a suit, the suit is being actively prosecuted; is that correct?"

Mr. GROSVENOR: Well, if you do not care to answer it, let it go.

The Witness: Oh, I will answer it. I will take my time about it. In that case, there was a great deal of testimony by one witness, and there were a great many adjournments,

- 1 and the usual delays in taking the testimony of witnesses. Most of the delays were delays on the part of the Edison Company which we could not prevent.

By Mr. GROSVENOR :

- Q. You further testified, on page 2137, the question by Mr. Kingsley : "What became of the suit between the Armat Moving Picture Company and the Edison Manufacturing Company? A. It was prosecuted until the Edison Company accepted a license under the patent. Q. When did they accept a license, do you recall? A. In 1908; December, 1908." Now, have you fully described or stated all the matters in connection with that suit going to support the answer that you gave on direct examination on page 2137, that the litigation was actively prosecuted? Are there any other facts that occur to you?
- 2

Mr. KINGSLEY : Objected to as incompetent, immaterial and irrelevant, and calling for a characterization, and a conclusion of the witness with respect to evidence already given.

- 3 Mr. GROSVENOR : The characterization was first given on direct examination and at the request of the counsel who is now objecting.

Mr. KINGSLEY : He was characterizing an occurrence in the past, but he was not characterizing his own evidence, which you are now asking him to do. That is the ground of my objection.

The Witness : Read the question, please?

- 4 The Examiner repeats the question as follows :

"Q. You further testified, on page 2137, the question by Mr. Kingsley : 'What became of the suit between the Armat Moving Picture Company and the Edison Manufacturing Company? A. It was prosecuted until the Edison Company accepted a license under the patent. Q. When did they accept a license, do you recall? A. In 1908; December, 1908.'" Now, have you fully described or stated all the matters in connection with that suit going to support the an-

swer that you gave on direct examination on page 2137, that the litigation was actively prosecuted? Are there any other facts that occur to you?" 1

The Witness: I answered the question as I understood it, and if there are any other facts that you wish to inquire about, I shall be very pleased to answer them to the best of my ability.

By Mr. GROSVENOR:

Q. Who was your attorney in this active litigation, as you describe it? A. Messrs. Church & Church. 2

Q. And who was the attorney for the Edison Company? A. Mr. Richard Dyer, I think.

Q. And who was the witness that gave this testimony which you say lasted some time? A. I was.

Q. You produced a number of circulars that you issued in 1901 and '02, which were introduced in evidence on direct examination. Have you any circulars that were issued at a later time, that is, closer to the date of the formation of the Patents Company, than those which you introduced? A. I think one of those circulars, if you can call it such, that is a copy of the injunction against Edison, was later than 1902, and there may have been some other circulars that were sent out, but I do not recall them. 3

Q. I notice that this agreement with Burton Holmes in 1900 provides that Holmes should make original negative film for you. Did you display positive motion pictures in your projecting machines from 1900 down through the ensuing years? A. We did.

Q. And those pictures were pictures of all kinds, were they, some made over here and some imported? A. They were. 4

Q. As I understood your testimony on direct examination, this Edison suit was the suit which particularly taxed your resources? A. All litigation that we had anything to do with, was expensive. I don't know whether the Edison litigation was very much more expensive than the litigation against the Biograph Company, but I do know that it occurred at a time when we were not so well provided with means for carrying on litigation.

Q. When did the litigation with the Biograph Company

1 terminate? Was it when they executed those agreements which your counsel introduced in evidence this afternoon?

A. It was not terminated until some time in 1904.

Q. You had no litigation with them after 1904? A. No, I think not.

Q. They took out a license from you about that time? A. They did.

Q. How long did that license continue in force? A. I regard that license as having been in force until the license that was subsequently taken out by the Biograph Company in 1908.

2 Q. Did they continue to pay you royalties from 1904 down to 1908 under a license? A. I think the papers that were filed with the contract or license of 1904, shows the facts in that case, and that was, in effect, that the Armat Company would not insist upon the payment of the license fees on the part of the Biograph Company, until the Armat Company had completed its—until the Armat Company had secured a permanent injunction against the Edison Company.

3 Q. You testified on direct examination at pages 2134 and 2135, that a suit was brought by the Armat Company in 1901 against S. Lubin. What disposition was made of that case? A. I do not think that case was pressed.

Q. Was any testimony ever taken in it? A. I believe not.

Q. Is it still pending? A. I imagine not.

Q. Do you know when it was dismissed, if ever? A. No, I do not.

4 Q. Was any testimony taken in the suit filed against P. B. Chase in March, 1901? A. We regarded the testimony taken against the Biograph Company as being testimony taken against all users of the Biograph machine, and I do not think that we took testimony in that case.

Q. That is, in the Chase case? A. Yes.

Q. Then you did not take any testimony in the case against the Eden Musee, did you, or against Lyman H. Howe, or against Robert H. Baum? A. In the Eden Musee case, the attorney for the Eden Musee advised them to pay a license fee, and from letters that I have, and from my own recollection, I believe the Eden Musee would have paid a royalty of three or four hundred dollars a year, but our

company was unwilling to license them unless they would make some adjustment of the claims for damages. I have with me a letter from Mr. Wilkinson, the attorney for the Eden Musee, addressed to Messrs. Church & Church, in which they state that they would advise their clients to pay a license such as I have indicated. 1

Q. This is back in 1903 or '04? A. Yes.

Q. Was any testimony taken in that suit? A. I think not.

Q. Was any testimony taken in the suit against Howe? A. I think not.

Q. Was any testimony taken in the suit against Robert H. Baum? A. Not unless you regard the testimony taken against Edison as being equivalent to testimony taken against Robert H. Baum. 2

Q. The fact is that the Edison case which we have been talking about and which you have described, was the case upon which you relied to establish your patent rights? A. I think I testified that we found that the Edison Company undertook to protect against us all users of their machines. In fact, I know that Mr. Gilmore of the Edison Company, sent out a number of circular letters to that effect, so that our company realized that we had to fight the Edison Company eventually, and we saw no reason in the multiplicity of suits, because when we defeated the Edison Company, we would defeat all other infringers who were using Edison machines. 3

Q. Then, the fact is, that you settled upon and selected the Edison suit as the one in which to have adjudicated your claims under the patent? A. That is correct.

Q. Who were the lawyers in the suit against the Biograph Company, that represented the Biograph Company—do you recall? A. They had quite a number, I think. I know that they had Mr. E. M. Marble, ex-Commissioner of Patents, and Kerr, Page & Cooper. I do not recall any others. 4

Q. Was any suit ever brought against the Armat Company prior to January, 1908, by reason of theatres exhibiting films in its projecting machine, that is to say, was any suit brought against the Armat Company before January, 1908, by Edison, under their film patent or film reissue patent? A. I think not.

- 1 ROBERT ETRIS, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR:

Q. Mr. Etris, you were with Mr. Lubin before you entered the service of the General Film Company? A. Yes, sir, in Philadelphia.

Q. Did you have any interest in theatres when you were connected with the Lubin Film Service? A. I never have been in my experience in the film business.

- 2 Q. On direct examination, you testified, pages 2058 and 2059, about litigation between Lubin and the Edison Company, and the effect of that litigation upon Mr. Lubin's business in Philadelphia. Can you give the name of the suit to which you were referring? A. I cannot. I do not know the details.

Q. Do you know where the suit was brought? A. I do not know that. It was simply a matter of common knowledge among the exhibitors and exchange men. We did not go into the details.

- 3 Q. That is, it was a matter of common knowledge that there was such a suit? A. That is the idea, yes.

Q. Do you know whether any testimony was taken in the suit? A. I know none of those details connected with it.

Q. You don't know anything about it, except that there was a suit? A. That is all.

Q. Mr. Lubin would be better qualified than you to testify as to the status of the suit? A. By far.

Q. And he is more qualified than you to testify as to what actual effect it had upon his business, than you? A. By no means—

- 4 MR. CALDWELL: That is objected to.

The Witness: By no means, when it comes to the Film Service Department, because Mr. Lubin was seldom there. I saw him as little as once a month for many months in succession.

By Mr. GROSVENOR:

Q. Did he own this Lubin Film Service? A. Yes, sir.

Q. When did that company start in business? A. The

exact date, I do not know. It started prior to my connection with the Lubin people. 1

Q. When did you go with them? A. It was in 1904 or 1905.

Q. How many customers did they have when you went with them in 1904 or '05? A. Fifty, or fifty-five.

Q. And how many customers did they have in 1911 or at the time that they sold out to the General Film Company? A. Between a hundred and a hundred and ten.

Q. How many did they have in December, 1908, about the time that the Patents Company was organized? A. Oh, it ran around a hundred. It would vary, being more or less. But the character did change. I do not mean to say when I say "customers," that I refer to theatres. We had a great many customers who were traveling exhibitors. 2

Q. In any event, the number of customers had doubled, more than doubled, in the several years that you had been with the Lubin Company, prior to the formation of the Motion Picture Patents Company? A. Putting them all together, traveling and exhibitors, calling them customers, the actual number of customers did double, yes.

Q. And this increase occurred in spite of this effect upon Mr. Lubin's business you have testified to, occasioned by the litigation existing between Edison and Lubin? A. I referred only to the theatres when I so testified. Not to the traveling exhibitors, of whom, I just stated, we had quite a large number. 3

Q. How many theatres were on your books when you first went with the Lubin Film Service in 1904 or 1905? A. That would be purely a guess on my part. I knew the total number of customers—

Q. Well, it is the fact that the number of theatres on your books had largely increased in those three or four years? A. There is no doubt but what they had materially increased, yes. 4

Q. And it is your belief if there had not been the litigation between Edison and Lubin, there would have been a much greater increase than actually occurred?

MR. CALDWELL: I object to that as calling for the witness' belief.

The Witness: Surely.

1 By Mr. GROSVENOR:

Q. You did not mean that your testimony given on direct examination should convey the impression that Lubin's business had been decreasing or had been unsuccessful owing to the existence of that litigation? A. It was unsuccessful because we were losing money. That is what I would call successful or unsuccessful, as to whether or not we were making money. We were compelled to buy more prints or film than we had actual use for, on account of the unsettled conditions.

2 Q. When was this? A. This was prior to the formation of the Patents Company.

Q. Then, in the year 1908, you say you were losing money in spite of this growing business? A. We were, because we were compelled to buy far beyond our needs. It was so uncertain. It would drop off and come on at a rapid rate.

3 Q. And you say that that loss was occasioned by litigation pending between Lubin and Edison? A. No, I think that affected the new business which we might have been able to secure. We could not induce investors. As I formerly explained, we had a lot of traveling exhibitors. That was a large part of our business. Our object was to induce people to put money into theatres, knowing that that would be stable business.

Q. How many new theatres were there opened up in 1908 in Philadelphia? A. I do not recall.

Q. You have not any figures or exact data that you can give? A. No, I have not.

Q. Don't you know, as a matter of fact, that Lubin and Edison came together early in the year 1908, and that there was no litigation between them in that year? A. I do not know that; no.

4 Q. You don't know whether they were in litigation in 1908, do you? A. My impression of it is that there was.

Q. On direct examination you testified, at page 2060: "By Mr. Caldwell: Q. You may state whether any of your customers expressed any fear of the result of that litigation? A. They did, in numerous instances. Q. They were uneasy, were they? A. Very." When was this fear expressed to you? A. There is no doubt but what it occurred during the time of the litigation. I am very hazy on dates. There was no doubt, at the time the suit was going on, a lot

of talk, and it was very hard to induce investors to go into the business. 1

Q. You are convinced that this period of unsettlement ended as soon as Lubin took out a license from the Edison Company? A. I would not say it ended. It had a soothing effect on it, as I recall, a distinct gain. There was less talk among the exhibitors.

Q. Now, if I should tell you that the evidence establishes, in this case, that the Lubin license from Edison was taken out in January, January 31st, 1908, would that refresh your recollection as to conditions existing in 1908, that is to say, as to whether they were better or worse than they had been theretofore? A. They improved after that matter between Edison and Lubin was settled. That, I recall distinctly. As to the date or the time, I would not want to say positively. 2

Q. Were you a member of the Film Service Association, like Mr. Schwalbe? A. Only the exchanges or the owners of exchanges were members. I was the manager of an exchange, and I was not a member.

Q. Did you attend the meetings? A. I attended two, in New York. 3

Q. When were those held? A. I don't remember the years. There were but two, I believe, held in New York. I attended both of those.

Q. You testified on direct examination, page 2062: "Q. Now, will you describe the conditions which obtained in the exchange business in Philadelphia during the year 1909 and up to July of 1910? A. The competition was very keen. None of us were making any money. It was a common practice to quote a man a certain price for service, and have one of the competing exchanges come to him and offer him a better price, or force him, or try to force him, to go to their exchange by means of getting the business of his competitor, and giving him a service that would be so new that, if we attempted to meet it, we would all be losing money. That was the common practice, and, I think, was the cause of the fact that none of us made any money for at least two years prior to the time that the Lubin office was taken over by the General Film Company." Is there anything you want to add to that answer? A. I do not think so. 4

- 1 Q. That answer, as you gave it, describes what seemed to you, the evils existing in the rental exchange business prior to the formation of the General Film Company?

Mr. CALDWELL: Objected to as calling for a statement of the witness based on facts which he did not testify to. He has not stated that those were all the evils in the exchange business at that time.

The Witness: Yes, sir.

- 2 By Mr. GROSVENOR:

Q. Did the branch of the General Film Company of which you became manager, become prosperous, so that it did make money? A. After it was purchased by the General Film Company, it got on to a paying basis.

- 3 Q. I show you Petitioner's Exhibit No. 121, Vol. 1, p. 467, being a letter on the letterhead of the General Film Company, dated November 13th, 1912, addressed to Messrs. Norton & Gentile, New Haven, Connecticut, signed "General Film Company, per R. Etris, branch manager." Will you look at that letter and see if that refreshes your recollection as to the facts stated in the letter? A. Yes, sir, I recognize it.

Q. You did write that letter? A. I did.

Mr. GROSVENOR: As part of the cross examination, relating to the answer given by the witness on direct examination, which answer has been quoted just above, being on page 2062, I request that this letter and exhibit be copied in the record at this point.

- 4 Mr. KINGSLEY: I object to encumbering the record, on the ground that it is already in the record, and simply a useless multiplication.

Mr. CALDWELL: I object on the further ground that it is a flagrant violation of the equity rules on the subject of encumbering the record. And I object to incorporating this letter as part of the answer which he gave on direct examination, as no part of that answer at all.

Mr. KINGSLEY: I do not quite understand how the record will read, or where this letter will be in-

served. Will you please read the record as it stands, 1
Mr. Examiner?

The Examiner repeats the record as above made.

Mr. KINGSLEY: I wish to object further, on the
ground that the attorney for the Government is
manufacturing an answer for this witness, which
he has not given to the question asked, and that it
is, in effect, a garbling of the record.

Mr. GROSVENOR: What answer have I manufac-
tured?

Mr. KINGSLEY: Go back to the question which is 2
referred to in the statement of Mr. Grosvenor when
he asks you to copy in this letter, Mr. Examiner.

The record is again read, up to this point.

The Examiner: Petitioner's Exhibit No. 121, as
requested by Mr. Grosvenor, will be inserted at this
point, subject to objections thereto made; and the
same is as follows:

Letterhead of

GENERAL FILM COMPANY

107 East 17th Street, New York

3

November 13th, 1912.

Mess. Norten & Gentile,
791 Chapel St.,
New Haven, Conn.

Gentlemen:

Yours of the 11th inst. received and regret to note that
you have decided to discontinue our service. We are sur-
prised to find that you are going to an exchange where 4
they do not have the various Specials which every up-to-
date manager realizes must be shown in order to hold his
patrons. Your action will, of course, compel us to fully
protect our other customers in the way of Specials and age
of reels, and we assure you that we will do so.

Yours very truly,

GENERAL FILM CO.,

Per R. Etris,

Branch Manager.

RE/RV

1 By Mr. GROSVENOR:

Q. Mr. Etris, in that letter just quoted, you say to Norton & Gentile, the addressees, "We are surprised to find that you are going to an exchange where they do not have the various Specials which every up-to-date manager realizes must be shown in order to hold his patrons." Please state what exchange you had in mind when you wrote that sentence? A. I was referring to the exchange that the customer was going to. I believe it was the Greater New York.

2 Q. You had in mind, then, the Greater New York Film Rental Company? A. Yes, sir.

Q. And that was the company to which you referred in the letter? A. Yes, sir.

3 Q. Mr. Etris, in direct examination, pages 2112 and 2113, you testified as to competition existing between the various licensed manufacturers and importers in the years 1908, when they were licensees of the Edison Company, and in 1909, and subsequently when they were licensees of the Patents Company. Now, it is a fact, isn't it, that the various licensed manufacturers distributed their standing orders and their regular releases to the rental exchanges during the time described by you, at the same prices, that is to say, each manufacturer distributed to the various rental exchanges at the same price as each other licensed manufacturer distributed an equivalent amount of a regular release? A. In other words, the price is the same from each manufacturer?

Q. Yes. A. That is correct.

4 Q. So that the competition you had in mind was competition as to quality, and so forth, and did not relate to competition in price? A. That is correct.

Q. On direct examination you testified, page 2114: "Q. Now, is the exhibitor in the branch which you manage, at full liberty to select his own program? A. Not absolutely, because they would naturally select nothing but the so-called better makes." Is there anything you care to add to that answer? A. I might add in explanation—

Mr. CALDWELL: Read the whole answer.

Mr. GROSVENOR: This is proper cross examination. I have given him a certain question and answer; he

is not entitled to read any more than I have given to him. 1

Mr. CALDWELL: Read him the answer that he gave.

The Examiner repeats the answer, as follows:

"A. I might say in explanation—"

Mr. GROSVENOR: I have given you an opportunity to say anything more you want to.

Mr. CALDWELL: There is a series of questions and answers, in which the witness does make an explanation of that answer.

Mr. GROSVENOR: It is perfectly right for me to have him give his explanation again if he wants to. That is the whole purpose of cross examination, to test the accuracy of the answers and the veracity of the witness. 2

Mr. CALDWELL: I object to the question in the form in which it is put, without the witness having an opportunity to read the subsequent questions and answers.

Mr. GROSVENOR: If this witness cannot give a fair explanation of an answer which he has once given, it shows he must have been coached. That is all there is to it. Now, witness, I ask you to give a further explanation of that answer. 3

Mr. CALDWELL: I resent the implication of counsel that the witness must have been coached.

Mr. GROSVENOR: That is the only inference that can be drawn from your position.

Mr. CALDWELL: It is absolutely clear. You may proceed.

By Mr. GROSVENOR:

Q. I will read that question again to you (p. 2114): "Q. Now, is the exhibitor in the branch which you manage, at full liberty to select his own program? A. Not absolutely, because they would naturally select nothing but the so-called better makes." Is there any explanation you want to add to that answer, or anything you wish to add? A. Under the circumstances, no. 4

Q. You feel that the answer is perfectly clear and needs no explanation, or needs no further qualification or addi-

1 tion? A. I cannot recall just what I said yesterday, but I imagine there was more that was said that had some bearing on it, which I cannot just recall.

Q. But you feel that that answer which I have read to you, is a full and complete and fair answer to the question which was addressed to you which I have read? A. No, it is not.

Q. Well, now, what do you want to add to it? I will read it again: "Q. Now, is the exhibitor in the branch which you manage, at full liberty to select his own program? A. 2 Not absolutely, because they would naturally select nothing but the so-called better makes." A. I will add an explanation to that. When I say about the so-called better makes, there are certain films which every exhibitor seems to want. Biographs, Vitagraphs, and some others. In order to protect them against each other, so they don't get repeaters, we are compelled to purchase the entire output so as to have sufficient pictures, regardless of their merit. If the customers selected their programs absolutely, they would not select any of the lesser makes, the less desirable makes, and the one who happened to come in first would get all the better makes, 3 and the poor fellow who came along later on, would have nothing left in the same age film but the poorer makes. That is why we are compelled, to a certain extent, to supervise the selection of programs, not leaving it entirely to the exhibitor. That is what I meant.

Q. Now, there is nothing else you want to add? A. No, sir.

Q. On page 2116, you said, referring to these independents: "Q. Have they taken many of your customers away from you? A. I cannot say that they have taken many customers, but they have caused reductions in a large number of 4 cases. One-half of our service would be cut off, and filled in with some special production from time to time. In that sentence, "one-half of our service would be cut off and filled in with some special production from time to time," I understand that you are referring to service in any particular theatre? A. In some one theatre, a man would reduce his service about half. That is what I mean.

Q. You did not mean by "one-half of our service," one-half of your total business? A. Oh, no.

Q. Your company has been developing the special fea-

tures as well as these independent companies which you named, has it not? A. There is a difference, because our company have set releases in the way of specials, whereas these others that I refer to, come out occasionally or spasmodically, without any set release day. 1

Q. But you have specials that are released regularly? A. Regularly each week.

Q. And you have in addition to that, this now so-called "Exclusive Service," have you not? A. Which is to be discontinued December 20th.

Q. Well, you do have that Exclusive Service today, whether it is to be discontinued later or not, don't you? A. We do. 2

Q. The Exclusive Service is a sort of a special special, isn't it? A. By the term "special," we mean really multiple releases, and the Exclusive Service does not have only multiple releases.

Q. I mean Exclusive Service is something which is even more desirable than a special, isn't it? A. That is questionable. Judging by the results, it is not, and the fact that it is to be discontinued so soon.

MR. CALDWELL: When was this service started, the Exclusive Service? 3

The Witness: I don't recall the date. It is a separate department from mine entirely, and I do not recall it. It is comparatively recent; only a few months.

By Mr. GROSVENOR:

Q. Do you know whether Mr. Lubin in 1908 or 1909 owned any theatres in Philadelphia? A. As to date, I could not say. He did have at one time, five theatres in Philadelphia. Whether or not they were sold to the Moving Picture Company of America, with which he had no connection, before or after the date which you mentioned, I cannot say. 4

Q. Do you know whether or not Mr. Lubin owns any theatres today in Philadelphia? A. Not to my knowledge.

Q. You don't know whether he does or does not, is that it? A. He does not; I can say.

Q. Does he own an interest in the corporation which owns the theatres called Lubin theatres over there? A. He does not.

1 Q. Who owns the companies which own the Lubin theatres, do you know? A. It is called the Moving Picture Company of America.

Q. Who owns that company? A. I understand there are four or five interested in it. Mr. J. Greenwald is one, Felix Isman, and others that I cannot recall.

Redirect examination by Mr. CALDWELL:

2 Q. Now, Mr. Etris, in answer to the question at the bottom of page 2114, which Mr. Grosvenor asked you if you wished to make any addition to, the question being as follows: "Now, is the exhibitor in the branch which you manage, at full liberty to select his own program?" to which you answered, "Not absolutely, because they would naturally select nothing but the so-called better makes"; were you referring in that answer to theatres located in the same neighborhood, that were competing against each other, and where some division of the early runs was necessary in order to avoid conflicts? A. Absolutely. That was my intention.

3 Q. You refer to the letter to Norten & Gentile where you made reference to another exchange which you said on your cross examination was the Greater New York Film Rental Company. At the time you wrote that letter, had you had any experience with the business tactics of the Greater New York Film Rental Company in your territory? A. I had.

Q. And was that letter written with reference to what you knew they had done in the past with respect to competition against you? A. Yes.

4 Mr. GROSVENOR: I object to this as leading, and also as stating that the letter refers to previous tactics of the Greater New York Film Rental Company, whereas, as a matter of fact, the letter does not.

By Mr. CALDWELL:

Q. You were familiar with the business tactics of that company in your territory, were you not? A. I was.

Q. Did you have in mind any particular practices that they resorted to when you wrote that letter? A. I did.

Q. What were they? A. The practice of calling on competitors and offering them, as in the old days, a very high-

priced service for a very low one, in order to affect my customers in that vicinity. 1

Q. And did that practice result in frequent conflicts of program? A. Invariably did.

Q. You have testified that your Norfolk branch of the Lubin Film Service was discontinued. Do you know about what time that was discontinued? A. I believe, in the latter part of 1909.

Q. And do you know why it was discontinued? A. It was a very unprofitable proposition. 2

Recross examination by Mr. GROSVENOR:

Q. One more question. Mr. Etris, this letter written by you, just referred to by Mr. Caldwell, is dated November 13th, 1912. What company, other than your own company, and the Greater New York Film Rental Company, was distributing the output of the so-called licensed manufacturers to exhibitors in your territory at the time that the letter was written? A. None.

Q. Several years prior to that date, that is, prior to the formation of the General Film Company, were there a number of companies distributing that product, that is, the product of the licensed manufacturers, in competition with each other, to the exhibitor? A. I am unable to answer that, because I came to New York for the first time as manager in May of 1911. 3

Q. Then your knowledge of the business does not enable you to testify as to the number of exchanges in New York? A. Not prior to that time, no.

Whereupon, at 5 o'clock P. M., on this Thursday, the 4th day of December, 1913, the hearings are adjourned until Monday, the 8th day of December, 1913, at 10:30 o'clock A. M., at the Hotel Manhattan, New York City. 4

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, December 8th, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 8, 1913, at Room 159, Hotel Manhattan, New York City.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon ALBERT J. GILLIGHAM, the next witness 1
produced by defendants, of lawful age, being first duly
sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Gilligham, and in what
business are you engaged? A. I live at No. 60 Virginia
Avenue, Detroit. I am in the motion picture business.

Q. What branch of the motion picture business? A. I
am manager of the Detroit branch of the General Film
Company. 2

Q. How long have you been the manager of that branch?
A. Three years the 21st of last month.

Q. That is to say, since the 21st day of November,
1910? A. Yes, sir.

Q. And prior to that time, in what business were you
engaged? A. I was in the motion picture business as an
exchange man.

Q. What was the name of your exchange? A. National
Vaudette Film Company.

Q. And what was your connection with the National
Vaudette Film Company? A. My connection with the 3
National Vaudette Film Company was treasurer and
manager of said company.

Q. You were interested as a stockholder? A. I owned
fifty per cent. of the stock.

Q. Who were the other principal owners? A. Emanuel
Mandelbaum.

Q. Yes. A. Jacob Diener and Philip Gleichman.

Q. How long were you connected with the National
Vaudette Film Company? A. I was connected with the
National Vaudette Film Company for about a year and
a half previous to the sale to the General Film Company,
but I was connected with the Vaudette Film Company, of
Grand Rapids, which combined with the National, under
the title of the "National Vaudette Film Company," for
about a year and a half previous to the sale to the Gen- 4
eral Film Company.

Q. And the Grand Rapids Film Company, with which
you were connected; what was your connection with that?
A. President and manager of that company, sir.

Q. Now, was that consolidation prior or subsequent to

1 the issuance of the licenses of the Motion Picture Patents Company; that is to say, about January, 1909? A. That was after our being licensed by the Motion Picture Patents Company.

Q. Did the Grand Rapids Company with which you were connected take out a license from the Motion Picture Patents Company in January, 1909? A. Yes, sir.

Q. And prior to that, was it one of the so-called Edison licensees? A. Yes, sir.

2 Q. How long prior to 1908 were you connected with the motion picture business? A. I have been connected with the motion picture business since January, 1906.

Q. Did you run an exchange during the year 1906? A. I ran an exchange from the latter part of 1906. Along about November, 1906, I engaged in the exchange business.

Q. With the Vaudette Company, of Grand Rapids? A. Yes, sir.

Q. So you are familiar with the conditions of the motion picture business from 1906 up to the present time? A. Yes, sir.

3 Q. Now, will you state briefly what the conditions of the exchange business were in the years 1906 and 1907, in the territory in which you were engaged? A. The conditions in 1906 and 1907 were very unsatisfactory. There had been a great number of people who had entered into the exchange business. In fact, the competition was so keen that there was no regulation to it. The result was that exchanges from Chicago, which is only a short distance from Grand Rapids, were furnishing films in our territory, and the result of that was causing a lack of interest among the public, and in the exhibiting end in the motion picture business, for the reason why that the same
4 program—even in the City of Grand Rapids, which is a town of a hundred and ten thousand people, there were three programs, or three theatres having the same program on the same date. It was a very uncertain business—it was not very staple—

Mr. GROSVENOR: Very “stable” or “staple”?

The Witness: “Staple,” I said.

By Mr. CALDWELL:

1

Q. Did you notice if there was any improvement in conditions after the Edison licenses were granted, early in 1906? A. Now, after the Edison licenses were granted, for a short time there was quite some improvement—that was after the F. S. A.

Q. Were you a member of the Film Service Association? A. Yes, sir.

Q. Your exchange? A. Yes, sir.

Q. Were you present at the Pittsburgh meeting? A. I was not present at the Pittsburgh meeting, but had a proxy there. I was present at the first meeting held after that at the Grand Pacific Hotel, in Chicago, and also I was present at the meeting held in Buffalo, and I attended all meetings that were held, of the Film Service Association thereafter, up to the time it disbanded in July of 1910—

2

Mr. GROSVENOR: 1909, you mean?

The Witness: 1910. I was also President of the Film Service Association for the unexpired portion of Mr. Swanson's term, and was elected for the following term thereafter.

3

By Mr. CALDWELL:

Q. In other words, the association did not entirely disband after the Patents Company licenses were granted? A. No, sir; it remained in existence for some time after that, or remained in existence until July, 1909. That was after the formation of the General Film Company.

Q. During the years 1906 and 1907, did you know of the patent litigation that was going on between Edison, on the one hand, or the Edison Company, on the one hand, and the various manufacturers or producers and importers of motion pictures, on the other hand? A. Yes, sir. I knew that there had been litigation between the Edison Company, and Mr. Sigmund Lubin, of Philadelphia, and also between William Selig, of the Selig Polyscope Company, and I also was aware there had been litigation between the Biograph Company, of New York, and the Edison Company.

4

Q. And was that a matter of common knowledge in the

1 business at the time, out in your territory? A. I won't say it was a matter of common knowledge, as a good many exchanges were just entering into business at that time.

Q. Was it a matter of common knowledge among the exchange men? A. Yes, sir; it was a matter of common knowledge, I imagine, amongst the exchange men.

Mr. GROSVENOR: I object to the answer, and move to strike it out, on the ground that what the witness may have imagined is immaterial and incompetent.

2 The Witness: Then I can answer that by saying that all exchange men were aware there was litigation between the Edison Company and the Biograph Company and other companies.

By Mr. CALDWELL:

Q. You had conversations with exchange men on that subject about that time? A. Yes.

Q. Now, did you know of the litigation that was pending in the year 1906, between the Edison interests, on the one
3 hand, and the Biograph Company, on the other? A. Yes, sir.

Q. And was that a matter of common knowledge among exchange men? A. It was a matter of general knowledge among exchange men.

Q. Well, was the practice of sub-renting of films from one exhibitor to another common in your territory during the year 1908? A. Yes, sir.

Q. And how long did that practice continue? A. That
4 practice continued during the time of the F. S. A. The Film Service Association tried to regulate it. We suffered a considerable loss of revenue, and exhibitors were violating the sub-renting proposition. I suppose the sub-renting proposition has been explained to you here?

Q. Yes. A. Now, we would ship Edward E. Smith, we will say, of Saginaw, Michigan, the Dreamland Theatre, and without our consent, then, he probably would ship this film to Bay City, and they would be used in Bay City, and from Bay City they would be shipped to West Bay City and used, and we would have to telegraph or telephone for the return of the films, and in some cases they would

claim that the operators had failed to send them in, and, therefore, they would use our films for a couple of days, we receiving no revenue on them, and on the other hand, having an exhibitor in Bay City, or in West Bay City, we would send in some films, not being aware that those films had been furnished to him without our consent by the man in Saginaw, with the result that we had considerable trouble with the customers we took on. 1

Q. Was this practice of sub-renting prohibited by a rule or regulation of the Film Service Association? A. Yes, sir.

Q. And at whose instance was that rule or regulation incorporated into the by-laws? A. There was a motion introduced at a public meeting by one of the exchange men, and my impression is, Mr. Swanson, that we try to discourage and have the practice of sub-renting discontinued. 2

Q. Then was it a regulation that originated with the exchange men, or with the manufacturers? A. It had been discussed by the manufacturers. The manufacturers were not members of the Film Service Association, and it was, therefore, recommended to the exchange men by the manufacturers.

Q. But was it adopted voluntarily by the members of the Film Service Association? A. Yes, sir. 3

Q. You were familiar, were you not, with the requirement in the exchange license of the Motion Picture Patents Company, that an exchange should lease a minimum of twenty-five hundred dollars per month? A. Yes, sir, and I considered that a very reasonable requirement for an exchange that was buying film.

Q. And why? A. Why, seven reels of film a week, or about twenty-eight a month, being the requirement, would amount to about \$2,800, and it would have been impossible for an exchange to have done any business with a smaller amount of film, and satisfy its customers properly. 4

Q. Take, for instance, your own exchange in Grand Rapids; how much film was that taking in January, 1909, if you recall? A. In January, 1909, we were buying twelve reels.

Q. And that would amount to how much, the price of that? A. The price of film was eleven cents, with ten per cent., or 9.9 per foot.

Q. Now, you are familiar also with the requirement in

1 the license of the Motion Picture Patents Company, that film shall be returned after approximately seven months. Did you regard this requirement as to the return of the film one in the interest of the business as a whole? A. Yes, sir.

Q. Why so? A. For the reason that it would take away the rainy and mutilated film; that would be film that would be scratched, and various scenes would have to be removed, owing to the fact that it had been damaged by exhibitors who had been using them. I considered that of great benefit to the business and to the public in general, as it took
2 a very undesirable lot of film off the market.

Q. In stating a few moments ago that you were taking twelve reels, you meant twelve reels a week, did you not? A. Yes, sir.

Q. And the average price of each reel was about how much, in dollars? A. Approximately about a hundred dollars.

Q. So that would make approximately \$4,800 worth of film you were taking per month? A. Yes, sir.

Q. When you signed the Patents Company license
3 agreement in January, 1908, about how many reels did you have on hand at that time? A. Nine hundred reels, or more.

Q. You were not required to return those reels or any of them as a condition in getting a license from the Patents Company, were you? A. No, sir.

Q. Now, do you recall when the return of film first commenced under the Patents Company license? A. The Patents Company license was issued in January, and I recall one condition of it was that the film was to be returned seven months from the time it was purchased, but
4 owing to the fact this would have brought it into about the month of August, that period was extended until September.

Q. In the meantime you had accumulated quite a large stock of new film? A. Yes, sir.

Q. And when you came to make your returns of film, what film did you select to return? A. We were permitted to return any film, that is, film of any make of equal amount of footage to what we had purchased later, and on complaints of the exchanges, owing to the fact that a certain quantity of film that was lost through making

patches and films where the sprockets were torn out, and that were destroyed on the machines, they made a concession, and we were permitted to return eighty per cent. of what we had purchased, instead of a hundred per cent. as the original requirements called for. 1

Q. And when you commenced to make your returns of film, what film did you select for the purpose of returning?

A. We selected the films that naturally were in the worst condition.

Q. And the films that you returned, were they of any use? A. I wouldn't consider them of any use from an exchange standpoint. 2

Q. Now, what demand was there at that time in your territory, for the so-called educational, scientific and scenic films? A. The demand at that time was very small, but there has been considerable demand created since, for scenic and educational films. After the first we retained all of a scenic and educational nature, and put them on our shelves, and we are to-day supplying in the City of Detroit and in Grand Rapids, six or seven churches, we supply the Ypsilanti State Normal School from time to time; also, the Ann Arbor University. We furnish films to the Jackson Prison, and also at Lapeer— 3

Mr. GROSVENOR: Objected to as immaterial.

By Mr. CALDWELL:

Q. Now, did this rule as to the return of film operate to prevent you from keeping back, if you were so disposed, all of your scenic, educational, and scientific films, for the purpose of accumulating a library? A. No, sir.

Q. The percentage of films of that character is quite small, is it not, as compared to the total? A. The percentage of scenic and educational films, as compared to dramatic, and comedy, and comedy-dramatic reels, is about five and one-half to seven and a half per cent. of the total. 4

Q. Did you find that the requirements of the Patents Company license, that the films should be leased instead of sold, operated to prevent exchanges from getting just as much use out of the film as under the old arrangement, where it was sold? A. No, sir. We do not consider films to be desirable for renting purposes after they are seven

1 months old. I know a great many members of the Film Service Association were in favor of them being returned at five or six months periods, instead of seven. A great many exchange men expressed themselves on it, that they should be returned before that, so as to keep a class of film on the market which would be always desirable.

Q. Did you find, prior to the Patents Company license, that is to say, prior to January, 1909, that it frequently happened that the same exhibitor would be taking his service from two exchanges at the same time? A. Yes, sir.

2 Q. Did you regard that as beneficial to the business?
A. No, sir.

Q. From the standpoint either of an exchange or an exhibitor? A. I considered it a serious detriment.

3 Q. And why so? A. For the reason that where two exchanges were furnishing one man, one of the other exchanges would be furnishing another exhibitor in the same section, it would lead to endless confusion on the part of the exhibitors, through their receiving the same plays on the same day, and in a great many instances, we had no check-up on each other; whereas the first had a check-up, and I mean by that a list of the films, which had been shown by the other exhibitor. If the exhibitor took enough
3 interest in his business to furnish the exchange so supplying him with a list of films that his competitor had used, it was possible for us to protect him against a repeating program. Otherwise, it was not.

Q. Then, the rule adopted by the Patents Company, prohibiting a continuance of that practice, was one in the interest of the exhibitor? A. We considered it such, yes, sir.

4 Q. During the year 1908, were the so-called Edison licensees, that is, the manufacturers, and the importers of motion pictures competing— A. Very much so.

Q. Between themselves for the business in your territory? A. Yes, sir.

Q. In what way did you observe that competition? A. They have sent representatives in there, and personally solicited the exchange business where we were not purchasing reels of certain manufacturers. They requested us, through correspondence, and even by personal solicitation, to buy their films. They also circularized the exhibitors, creating a demand for the film, and wrote the exhibitors in every instance requesting them to have their

exchange furnish them with the films, showing the exhibitor, through their advertising matter, that the film was a very desirable subject. 1

Q. Did you observe in your territory that your customers demanded reels of certain producers in preference to others? A. Yes, sir.

Q. Did that competition between the licensed manufacturers continue after January, 1909? A. Yes, sir; if anything, more pronounced than what it was before.

Q. And does it continue at the present time? A. It even continues to this date. Well, they do not solicit orders from the managers of the General Film Company, but they still circularize the exhibitor, sending out synopses of the story of the film, and in a great many instances send out illustrations from the various scenes, and even send out photographs of their stars, both male and female, that appear in these productions, and try to create a demand for the film through the exhibitor. 2

Q. Do you find that the popularity of certain brands of films of the licensed manufacturers has varied from time to time in your territory? A. Yes, sir.

Q. And is that still going on? A. Yes, sir. 3

Q. About when did you sell your exchange, the National Vaudette Film Company, to the General Film Company? A. Arrangements were made in August, 1910, but the exchange was not turned over until November 21st, 1910.

Q. Will you state the circumstances that led up to that sale, with whom you negotiated and how they were instituted? A. Well, we had heard that the General Film Company had been formed, and that they were purchasing exchanges. One of the first that they purchased, I believe, was Mr. Howard's, of Boston, and while in Chicago, George Kleine stated that he had sold his exchanges, and from time to time we were informed, and heard it in bulletins, or rather, through information from various men, exchange men, that their exchanges had been sold. So, Mr. Mandelbaum, who was a stockholder of the National Vaudette Film Company, and who was also interested in the Lake Shore Film Company of Cleveland, called me on the telephone and suggested that we go to New York and receive an offer for our exchange. I wired Mr. J. J. Kennedy, at No. 10 Fifth Avenue, New York, asking for an appointment, and Mr. Gleichman and I came to New York from Detroit, and Mr. Mandelbaum came 4

1 from Cleveland and met us at the Knickerbocker Hotel in New York; we went to my room and held a meeting to decide on the minimum price we would accept from the General Film Company for our exchange, and we then went over to No. 10 Fifth Avenue, and there we met Mr. Kennedy.

Q. Proceed, and state what was said. A. Mr. Kennedy asked me, "Well, I have an appointment with you gentlemen. What can I do for you?" And then we told him we were there to sell our exchange, and he said, "Are you here for an offer, or for a sale?" and I informed him, to sell if the price was satisfactory.

2 Q. Mr. Mandelbaum was present, was he? A. Yes, sir. Mr. Kennedy looked over some data he had on a table there, and he said, "I will give you sixty thousand dollars for your exchange," and I said, "It is accepted." But I was frank with Mr. Kennedy, and told him in the presence of Mr. Mandelbaum and Gleichman that if I had made the price it would have been a few thousand dollars less than what he offered.

3 Q. Was there ever any threat made to you at any time by anyone connected with the General Film Company, or the Motion Picture Patents Company, that the license of your exchange would be cancelled if you didn't sell? A. There was never any such threat made to me, sir.

Q. Or that the General Film Company would open a competitive branch in your territory? A. I never heard of that, sir.

Q. Did you make any agreement with the General Film Company verbally or in writing that you would not enter the exchange business? A. No, sir; there was no condition of that kind implied.

4 Q. Or that you would remain in the employ of the General Film Company? A. No, sir; that was not discussed at that time.

Q. You were familiar with the clause in your license agreement giving the Patents Company a right to cancel the license on fourteen days' notice without cause? A. Yes, sir; I was familiar with that, and read it very carefully before we signed the license.

Q. Did that operate on your mind at all in determining whether you would make an offer of sale or not? A. No, sir.

Q. Suppose you had decided to continue in the exchange business, was the supply of pictures at that time being turned

out by the so-called independents sufficient in quality and quantity to enable you to conduct an exchange business in your territory? A. Yes, sir. 1

Q. Had you been so advised? A. Yes, sir. There were other exchanges that were being conducted in our territory that were using the independent program.

Q. What other exchanges were there in your territory, independent exchanges, at the time you sold to the General Film Company? A. There was the Michigan Film Company, located in the Union Trust Building, Detroit; there was the Toledo Film Company, located in Toledo, Ohio, and there was also the Superior Film Company, located in Toledo, Ohio, handling the independent program. 2

Q. Do you know whether Mr. Mandelbaum entered upon negotiations for the sale of the Lake Shore Film & Supply Company at the same time when he made this visit to Mr. Kennedy with you in connection with the National Vaudette Film Company? A. Yes, sir.

Q. Did you have any conversation with Mr. Mandelbaum about that time?

Mr. GROSVENOR: What time was this? 3

The Witness: This was in August, 1910, at the time the National Vaudette Film Company was sold to the General Film Company. After Mr. Kennedy had made the offer, and it had been accepted for the National Vaudette Company, Mr. Gleichman and myself went down stairs at No. 10 Fifth Avenue, and Mr. Mandelbaum came down and told us what he had been offered for his exchange.

By Mr. CALDWELL:

Q. Did he tell you whether or not it was satisfactory to him, or that he was going to sell? A. He said he was going to sell. He didn't consider the price to be as good as he expected, owing to the fact that we had received a larger price for the National Vaudette Film Company than what had been offered for the Lake Shore Company. 4

Q. What price did you get for the National Vaudette Company? A. Sixty thousand dollars.

Q. Did you consider that exchange as valuable as his, or more so? A. We had two exchanges that had been

1 one combined a short time previous, and Mr. Mandelbaum had one, and we figured that, owing to the fact that there were two exchanges in the Detroit office, we had received a greater price for it than what they were paying for one office.

Q. During the years 1908, 1909 and 1910, do you know whether it was a common practice for exchanges to own, or to be interested in, a circuit or string of theatres? A. Some of them were interested in theatres.

2 Q. Did you regard that as a good thing for the business, from the standpoint of the exhibitor? A. Did I regard it as a good thing for the exhibitors?

Q. Yes; for the business in general, from the standpoint of the exhibitor? A. All other exhibitors would have had an equal opportunity to have secured the same class of program, if willing to pay the price, but where exhibitors had competition with the other theatres that were owned or controlled by exchanges, they naturally didn't do business with an exchange that owned theatres. Where the privilege was abused, I considered it a detriment to the business.

3 Q. Did you hear of many complaints at that time among the exhibitors on that account? A. No, sir, not in our territory.

Q. Then that was not customary in your territory to any great extent? A. It was not general in our territory.

Q. Do you know of any instance where an exchange has threatened an exhibitor that, if he didn't take service, the exchange would put in a competing theatre? A. Yes, sir.

Q. And put him out of business? Where did that happen? A. In the City of Detroit.

4 Q. Can you tell us something about that? A. Yes, sir. A gentleman who operated the Michigan Film Company, which was a licensee of the Motion Picture Patents Company, would go to a house and solicit their business, and if the man would not favor him with his film business, he would immediately threaten to put him out of business by opening a theatre in his neighborhood. He done this in one particular instance that I know of, out on Grand River Avenue, where a man by the name of Moore operated a small theatre, and Moore would not do business with the Michigan Film Company, and this man went

in along by the side of him, and built a larger house, and in a short time Mr. Moore was compelled to quit business. 1

Q. Did you know of many instances of that kind? A. There were a number of instances of that kind, sir, outside of this one. Chicago exchanges would come into the territory, and if the exhibitor would not favor them with their business, they would threaten to put in all films to their competitors ahead of what they were receiving.

Mr. GROSVENOR: I object to this general statement. 2

The Witness: I can make it specific if you want to.

By Mr. CALDWELL:

Q. Make it specific, if you can. A. There was an exchange out in Chicago, the Standard, came into Battle Creek, and notified a customer there by the name of Lipp & Cross that if they did not take films from them, that they would take the opposition house across the street, and they would put all films into that house ahead of what Lipp & Cross were receiving from our office in Detroit. 3

Q. Do you know who it was that operated this exchange that you speak of, the Standard Exchange? A. A man by the name of Joe Hopp.

Q. Who ran the Michigan Supply Company? A. It was run by a man by the name of William Klatt. The Michigan Film & Supply Company was the title of it.

Mr. GROSVENOR: When was it that it did that? 4

The Witness: When was it that Mr. Klatt went in and built theatres, sir? He made quite a practice of doing it, sir, and it was along in 1910 that he built this theatre out in Grand River Avenue; in fact, it was a general practice with him to threaten exhibitors there if they did not accept service from him; he would go in and build theatres, and, in fact, he really had the exhibitors frightened.

1 By Mr. CALDWELL:

Q. Now, what competition has the General Film Company in your territory? First of all, will you tell me what territory is served by your branch of the General Film Company? A. We furnish from Monroe, Michigan, to Sault Sainte Marie, and we handle Toledo, Ohio, and a few other small towns that are close by there. The reason why we do not go beyond Sault Sainte Marie, Michigan, is that it is a loss of time if we would have to serve over into that territory. All that territory above Sault Sainte

2 Marie that uses licensed service, is furnished by our Chicago branches, because of superior train facilities for reaching it.

Q. In other words, you furnish all Michigan, except the upper peninsula? A. Yes, sir.

Q. That is served from Chicago? A. Yes, sir.

Q. And to what extent do you go down into Ohio? A. We furnish twenty accounts in the City of Toledo, and we have got ten to twelve other accounts in that section.

Q. Who are your competitors in that territory? A. My competitors in that territory are the Mutual Film Company of Detroit, the Mutual Film Corporation, I believe, is the proper title—the Universal Film Company, of Detroit, the Mutual Film Company of Grand Rapids, the Universal Film Company of Grand Rapids, the Mutual Film Company in Toledo, Ohio, Universal Film Company, in Toledo, Ohio, the Famous Players Feature Film Company, the Wolverine Feature Film Company, the World's—there is the Mandelbaum Company, has got an office in Detroit, and I am trying to think of their title—the World's Feature Film Company, located in the Equitable Building, and also three or four other state right offices, which are located in Detroit and Toledo.

4 Q. Do you know how many motion picture theatres there are in Michigan? A. In the territory that is furnished by my exchange, there are 550 theatres.

Q. Of that number, how many are there supplied by the General Film Company? A. The General Film Company furnish 210 accounts.

Q. Do you know how many the Mutual furnish? A. Yes, sir.

Q. How many? A. The Mutual Film Company furnish 140.

Q. And how many do the Universal? A. The Universal, 120. 1

Q. Do you know to what extent theatres in your territory are served by other branches of the General Film Company? A. There are 470 theatres that are furnished by the Universal, the Mutual, and the General Film Company. That leaves 80 theatres, and out of the 80 theatres, I was informed by our Chicago manager yesterday, Mr. Van Ronkel, that they were not furnishing over—

Mr. GROSVENOR: I object to this witness stating what he was informed by another employee of the General Film Company, and giving that information, as an improper statement. 2

The Witness: I had no other way of securing that information, and I was requested by the General Film Company to get up a list of the number of theatres in my territory; so as to be accurate on it, I asked Mr. Van Ronkel for that information, and he informed me that we were not furnishing over 30. That, therefore, left 50 for the independents. 3

By Mr. CALDWELL:

Q. What is the character of this competition that you are having with the Mutual and the Universal exchanges, and the special features? A. It is stronger than ever it was in the history of the business.

Q. Has it been the practice in your territory that you would take customers from them and they would take customers from you, back and forth? A. Yes, sir; day and night.

Q. And how long has that continued? A. Ever since they have been in business. the competition is very pronounced. They are out after our business. We are out after their business. They keep a representative or traveling man out, and we keep a man out. Each one of these companies, from each of these offices, has got a man out. 4

Q. Now, when you say there are 550 theatres, motion picture theatres, in your territory, how do you get at those figures? A. I got that list through some information from

- 1 the Fire Marshal's office, at Lansing, Michigan, and also, from a list which we have in our office that is compiled for our records through information that the traveling representative brings in, and also, through the theatres that we are furnishing, and that we know that the exchanges are furnishing.

- 2 Q. Are all motion picture theatres in Michigan required to be licensed? A. All of the theatres in the cities are licensed, and there is also a State law that was passed at the last session of the Legislature at Lansing, that requires them to be inspected twice a year by the State Fire
3 Marshal's office, but that law is inoperative at the present time, owing to the fact that there were injunctions got out by Corporation Attorney Lawson, of the City of Detroit, claiming that they had no right—the State had no jurisdiction in Detroit—

Mr. GROSVENOR: I object to that as immaterial.

- 3 The Witness: —owing to the fact that the theatres there were built under the requirements of the city ordinance, which requires that a certificate has to be furnished by the
4 Public Lighting Commission, the Building Commissioner, and the City Fire Marshal.

By Mr. CALDWELL:

- 4 Q. At the time you went into the motion picture business, what was the character of the theatres in your territory? A. The character of the theatres at that time were all store shows; in fact, I am frank in stating that when you told a man you were in the motion picture business, if you would happen to meet a gentleman on the train or
5 anywhere, he would naturally look, and ask what it was. It was looked on with disfavor, as all store shows previously had been shows of an undesirable character. Mostly fake shows. Shows that were showing monstrosities, or had displays outside with a hand organ or a sick monkey. Something of that order. At first, when these shows were put in, they were put in temporarily, and, in a great many instances, there was not much attempt to fit up the store in which the projecting machine was placed.

Q. What is the character of the theatres, motion pic-

ture theatres, in your territory now, as to structure, accommodations, and seating capacity? A. There are theatres that are used for motion picture purposes in our territory today that have cost as high as \$200,000, sir. The general character of all the theatres has materially improved in the past four years, especially in regard to having the houses better ventilated and having them well lighted. Previous to four years ago, as a general rule, you would go into a dark room. Now the exhibitor seems to take a pride in keeping his place clean and having his house very well illuminated. 1

Q. Well, for the most part, are the buildings specially built for the purpose of motion pictures, at the present time? A. A large percentage of them are built expressly for that purpose, or there are spaces that have been transformed over to be used for that purpose. 2

Q. Take the City of Detroit. How many theatres are there that will seat from 500 up? A. How many theatres are there that will seat from 500 up?

Q. Yes. I am speaking of motion picture theatres. A. I understood that, sir. Ten theatres that will seat from 500 to 1,800. 3

Q. And of those ten theatres, how many are being served by the General Film Company? A. The General Film Company is serving five of them.

Q. And who are serving the other five? A. The independents. The largest theatre there, the Broadway Theatre, a house that cost \$225,000, with 1,800 seats, is being furnished with an independent program.

Q. What is the next largest city in your territory? A. Grand Rapids.

Q. Could you say how many theatres there are in Grand Rapids seating from 500 up? A. There is only one theatre in the city of Grand Rapids that has a seating capacity of over 500. There is another one in the course of construction that will have 600 seats. 4

Q. And who are serving those two theatres? A. Well, this one theatre with the 600 seats is not completed as yet, sir. The other house has 1,100 seats. That is using the independent program.

Q. What is the next largest city in your territory? A. Toledo, Ohio, is larger than Grand Rapids. Toledo has about a quarter of a million.

- 1 Q. What is the condition there as to the number of larger theatres, from 500 up? A. There is the Columbia Theatre there, that seats about 800. There is the Alhambra Theatre there, that seats over a thousand. The Colonial Theatre, that seats about 900. The Atlas, that seats 900. The Coliseum, that seats twelve to fifteen hundred.
- Q. You have mentioned six theatres? A. Yes, sir.
- Q. You have mentioned the six largest theatres there? A. Five, I believe. The Columbia, Colonial, Alhambra, Atlas, and Coliseum.
- 2 Q. How many are being served by the General Film Company? A. The General Film Company furnishes the Atlas, the Columbia, and the Colonial. The Alhambra is the largest house of the five. That is, in the downtown section. That is devoted exclusively to motion pictures.
- Q. And who is serving that? A. The independent program.
- Q. Then you are serving three of the five, in that case? A. Yes.
- Q. Which is the next largest city in your territory? A. The next largest city would be either Bay City or Saginaw.
- 3 Q. And what are the conditions there? A. The largest house in Bay City is furnished by the independents. It is owned by a man by the name of Lahey, and is located on River Street. The largest house in the City of Saginaw is furnished by the independents. It is known as the Bijou Theatre, and is owned by the Bijou Amusement Company.
- Q. How much business are the special feature people doing in your territory? A. You mean the amount of business they are doing?
- 4 Q. Yes, the amount of business. A. We give them credit for doing twenty-five hundred to three thousand dollars a week.
- Q. About what percentage would that be on the total amount of business in that territory, if you know? A. About twenty per cent.
- Q. Has the Famous Players Film Company gone actively into business in your territory? A. Yes, sir, very much so.
- Q. What class of theatres are they serving, as to size?

A. Pardon me; I overlooked one thing in my previous answer, if I can repeat it to correct it. 1

Q. You may. A. The largest theatre in the city is using the Famous Players program.

Q. In what city? A. In Detroit. The Liberty Theatre. Exclusive motion picture house.

Q. Was there ever any time, in your territory, when it could be said that there is such a thing as a definite market price of service to the exhibitor? A. There was one time, shortly after the formation of the Film Service Association, that there was a schedule of prices agreed on by the Film Exchange men, and the exchanges attempted to enforce it, but it was only of short duration. I do not believe it lasted over thirty days. 2

Q. Well, with that exception, what would your answer to my question be? A. There has never been any time since, that there has been any regulation of price.

Q. Is it customary to have a daily change of program throughout your territory? A. That is the general custom through our territory.

Q. How long has that custom been in vogue? A. That custom has been in vogue since about 1909. It was more general from 1910 on, from what it was previous. 3

Q. And what is the average number of reels constituting a daily change? A. The average number of reels is three reels, daily change.

Q. What is the average cost of service to the exhibitor in your territory? A. The average cost of service to the exhibitor in our territory, that is, the customers we are furnishing, is \$33 per customer.

Q. And the same class of theatres, and for the same class of service, what were they paying, say, in December, 1908? A. In December, 1908, they were paying as much, if not a better price, than what they are paying now, but they did not receive as many changes as we are now furnishing. 4

Q. Was the price of service to the exhibitor increased after the formation of the Motion Picture Patents Company? A. No, sir.

Q. When the General Film Company entered that territory, did it raise the price of service to the exhibitor? A. No, sir.

Q. Is the exhibitor getting more or less for his money

1 now than he was for the same service in 1908 and 1909? A. I would say the exhibitor is getting 33% more for the money he is paying now, than he did then.

Q. Why so? A. My reason for making that statement is, we are buying twice or two and a half times the amount of film that we purchased in them days, and all of different makes, thereby giving the exhibitor a much greater variety of program than what we furnished him at that time. And even at that time and later, when a custom of a daily change of three reels was first started by the exhibitor, the exhibitor only received fourteen clear reels. By a clear reel,
2 I mean a reel that had not been shown. You were compelled to furnish him seven repeaters. Today, for the same price, the exhibitor is getting twenty-one clear reels, and in these twenty-one clear reels, we furnish two or three feature multiple reels, varying from one to three thousand feet in length, without any extra price.

Q. As the manager of your branch of the General Film Company, are you at liberty to order pictures from the manufacturers on your own initiative, or are you controlled by the home office in that respect? A. I buy what will
3 best meet the requirements of my customers. I have never been instructed by the home office to buy anything. I buy what I think, in my judgment, will best suit the requirements of the exhibitor in my territory.

Q. They never undertake to interfere with you at all, then? A. No, sir. They never have.

Q. To what extent is the exhibitor in your territory, your exchange, at liberty to select his own program? A. All of our first-run accounts, which are the theatres that pay the largest price for service, are given a list of our weekly purchases. They select from this list the films that they desire
4 for their program. To the other customers, we give an advance booking schedule, showing what we propose giving them on the various days of the week, and the schedule is usually given to them two weeks in advance. If they desire a change made on any film or films on any day that this program has furnished for them, we are always too pleased to change it for them. Do anything I can to satisfy our customers.

Q. How long in advance does the exhibitor know just what the character of the pictures is that he is scheduled for? A. The exhibitor knows at least one week, and anyone

that is using films later than seven days old, know according to the ages of film that they are receiving; for instance, if a man was using thirty-day film, he can tell thirty days in advance what the nature of these films is going to be, through the trade papers, and also through advance information that is sent out to the exhibitor by the manufacturer in the way of a synopsis of the film story.

Q. Accompanied by photographs or cuts of the scenes?

A. Invariably accompanied by cuts of the various scenes from the film on the same paper that the synopsis is printed on, and in a great many instances, the manufacturer will send out special advertising matter pertaining to some film that they are going to release, to the exhibitor.

Q. Take the case of an exhibitor, a new exhibitor, who is coming to you for service. Explain, will you, just how his program is made up? A. The exhibitor applies to us for service. We inquire what territory, or what town that he is contemplating opening his theatre. He informs us the section of the city or the respective town. We look up our records and find what we are furnishing in that section or city. If our program is all placed with exhibitors in that section or city, we immediately notify this gentleman that we have not got anything open. We will give him a program, but it will have to be films that have been shown by either one or both of the other theatres, and we go further. We offer to give him the pick, let him make his own selection, from the forty-two reels, to furnish a program to him. In other instances, where we have films shown in a certain section—for instance, I am supplying, we will say, the Gem Theatre on Grand River Avenue, Detroit, 21 reels. Another man desires to open there, three blocks away. We look up the records and we find that the Gem Theatre is paying us \$35 a week. We offer this gentleman as near the same age of service as what we are furnishing his competitor, at the same price.

Q. Is it possible for the exhibitors throughout your territory to advertise their program in advance? A. Yes, sir.

Q. Do they do it to any extent? A. A large percentage of them do so.

Q. Was that possible at a time when two or more licensed exchanges were operating in your territory? A. No, sir.

Q. Why not? A. For the reason why, that if one exhibitor would happen to advertise a film that he was going to

- 1 show a week afterwards, or within three days afterwards,— I have known of instances where his competitor has got on a train and gone to Chicago and brought the film back with him, and put it on one day or two days ahead of the other man, therefore causing the other man quite a loss through the amount of money that he expended in advertising, and it was a very unpleasant condition. That practice don't exist any more.

Q. And the public in the end was the sufferer by that?

A. The public was the sufferer, sir.

- 2 Cross examination by Mr. GROSVENOR:

Q. Mr. Gilligham, you have been quite a number of years in the film business, haven't you? A. Yes, sir.

Q. Did you start in with a small venture or investment in 1906? A. Yes, sir.

Q. How much did you start with? A. Do I have to answer that question?

Q. Well, was it very little? A. No, it was not very little. It was a fair sum. It was several thousand dollars.

- 3 Q. That was what you invested in the rental exchange business in 1906? A. Yes, sir.

Q. And your business had developed, and grown in the years 1906, '07 and '08? A. Yes, sir.

Q. And the amount that you put in had largely increased by 1910? A. I had taken it out several times, Mr. Grosvenor.

Q. You had not only taken it out several times, but you had several times that amount remaining in the business? A. I considered it worth several times that amount.

- 4 Q. So that in spite of the conditions which you on your direct examination described as unsatisfactory in 1906 and '07, the fact is that, so far as your business was concerned, it had been very prosperous? A. It had been very prosperous, but considering the length of time that I had to devote to it, which was virtually day and night in them days, Mr. Grosvenor, I did not feel that I was more than receiving a good salary for the time I put in at it.

Q. You said on direct examination that conditions in 1906 and 1907 were unsatisfactory. Competition was so keen, and there was no regulation to it. Is that what you said on direct examination? A. Yes, sir.

Q. One of the objects in forming the Film Service Association was to regulate that condition and remove those unpleasant conditions? A. Yes, sir. 1

Q. You said that you attended various meetings of the Film Service Association? A. I attended every one except the one at Pittsburgh, Mr. Grosvenor.

Q. Some of the objects in forming the Film Service Association were to fix the prices of service, weren't they? A. No, not particularly. That was afterwards. The principal thing was to try and regulate the sub-rental evil and other evils that existed among the exhibitors.

Q. Then these regulations which are shown in the by-laws of the Film Service Association were adopted by the rental exchange men themselves? A. Yes, sir. 2

Q. Without co-operation from the manufacturers? A. The manufacturers might have made suggestions to them, but the Film Service Association was composed of renters.

Q. Quite a number of the manufacturers were interested in rental exchanges, which were members of the Film Service Association? A. No, sir. I believe there was only one or two. Mr. Kleine was not a member of it, because Mr. Kleine was on the outside with his exchanges at that time, and the Vitagraph Company, I was informed, owned one exchange, and Lubin and the Vitagraph Company were the only manufacturers that were in the exchange business, that were members of that Association. 3

Q. You say that after the Film Service Association was formed, that there was an improvement in prices for a time? A. Short time.

Q. The Biograph Company refused to join in with the Edison licensees, that was known to you, was it not? A. I could not answer that, for I don't know.

Q. Don't you know that Kleine and the Biograph Company, in 1908, did not join in with the Edison licensees? A. I know that there was an affiliation between Kleine and the Biograph Company, but whether the Biograph Company refused a license from the Edison Company, I could not say. 4

Q. Well, members of the Film Service Association in 1908, confined their purchases of film to the Edison licensees? A. The Edison licensees, yes, sir.

Q. And they did not buy from the Biograph Company or from Kleine? A. Not that I know of.

1 Q. And then, immediately, very fierce competition developed between Kleine and the Biograph Company, and their exchanges, with the exchanges of the Edison licensees? A. Kleine and the Biograph Company put up a good fight. They gave us a good fight.

2 Q. And the competition caused by Kleine and the Biograph Company was one of the reasons why prices which had been improved by the Film Service Association, did not remain in that improved condition? A. No, sir. The reason for the change in prices was because of the reason of the unprincipled competition and acting in bad faith of members of the Film Service Association, before even the Kleine and Biograph deal was arranged, so that they could put out a strong program against us, that our own members started this upsetting of conditions.

Q. And the upsetting of conditions was still further increased by Kleine and the Biograph Company setting out and fighting the rest of you? A. Very much so. Yes, sir.

3 Q. And all you Film Service Association men took out uniform contracts for the buying of film with all of the Edison licensee manufacturers? A. No. Not uniform. There was a uniform contract with each manufacturer, if that is what you mean, sir?

Q. Yes. A. Yes. That is perfectly true.

4 Q. That is to say, you signed a contract for your exchange with the Edison Company, and with the Essanay Company and Lubin Company, and so forth? A. No, I would not say that we ever signed any contract with the Essanay Company and the others. We ordered films from them, you understand, and we had to give them, you understand, a certain period of notice before we could cancel the film from them, but that was the only agreement that we had made with them, or the only condition of the purchase.

Q. The General Film Company had been doing business and had acquired a number of exchanges before you sold out to them in the Fall of 1910? A. We sold out to them in August, 1910, but we did not turn over the office until November, for the reason why, that we had not received our contracts up to that time.

Q. The General Film Company had acquired a number of exchanges and was doing business, or had been doing

business for some time before you agreed to sell out in August, 1910? A. They had acquired some exchanges, yes, sir. 1

Q. You knew at that time, that they were entering largely upon the rental exchange business? A. I heard that they were purchasing exchanges, and knew that they were purchasing exchanges.

Q. Who devised the by-laws of the Film Service Association? A. Devised by the committee.

Q. Who was the committee? A. James Clark, of the Pittsburgh Calcium, F. C. Aiken, Theatre Film Company of Chicago, William Swanson, Swanson Film Exchange of Chicago, Frank Howard, of the Howard Film Company of Boston, P. L. Waters, Waters Film Exchange, New York. A gentleman by the name of Peckham, who operated an exchange in Cleveland, Ohio. I think his initials were R. L. Pretty positive his initials were R. L. Let me see—Clark was President, Peckham was Vice-President, Waters was Treasurer—or Mr. Aitken was President, and there was another member on that committee. I cannot recall who the other member of the committee was at that time, sir. 2

Q. Have you any interest in any theatres to-day? A. I am a stockholder in some. 3

Q. In how many? A. Seven. I have been a stockholder in them for seven years or more.

Q. Where are these seven theatres that you are a stockholder in? A. Six of them are located in Grand Rapids, and, I might explain, that one of them is a Keith vaudeville house.

Q. And where is that located? A. Grand Rapids.

Q. Are these seven theatres in which you have a stock interest all located in the territory covered by your branch of the General Film Company of which you are the local manager? A. Yes, sir. 4

Q. And are all of these seven theatres supplied with film by the General Film Company? A. No, sir.

Q. How many of them are supplied by other sources? A. Three.

Q. What are those theatres? A. The Orpheum.

Q. That is a vaudeville theatre? A. No, I did not say that was a vaudeville theatre. The Columbia is the

- 1 vaudeville theatre. The Columbia is supplied by the independents.

Q. Where is the Orpheum Theatre? A. The Orpheum is located on Canal Street, Grand Rapids, has 1100 seats. And the Idea Theatre is supplied by the independents, and the Original Vaudeville is furnished with an independent program.

Q. These theatres are all located in Grand Rapids? A. Yes, sir.

- 2 Q. What are the theatres in Grand Rapids, which you have an interest in, which are supplied by the General Film Company? A. Monroe Vaudeville, the Idle Hour, and the Columbia Vaudeville Theatre, we furnish one reel a week to—the Pathe weekly.

Q. Do these six theatres show motion pictures exclusively? A. Four of them do.

Q. Did you have an interest in this \$200,000 theatre? A. No, sir. I wish I had.

Q. Where is that located? A. That is located on Broadway, in the City of Detroit.

- 3 Q. Whose motion pictures does that theatre exhibit? A. At the present time they are using film that is made by one of the feature film companies, called the Eclectic Feature Film Company.

Q. Have you at any time supplied them with film? A. No, sir.

Q. What is the weekly business, gross, of the General Film Company in your territory? A. The weekly rentals?

Q. Yes. A. We are doing about seven thousand a week. I can give you the rentals of the others, if you want it. Of the Mutual and Universal.

- 4 Q. Now, please name the five theatres in Detroit which you serve? A. We serve the National, and we serve the Family Theatre. We serve the Empire Theatre; we serve the Forest Theatre, and we serve the Temple Theatre.

Q. What other theatres in Detroit do you serve? A. Why, we furnish, oh, fifty-four or fifty-five more.

Q. You testified on direct examination that there are ten theatres having 500 or more seats, of which you serve five? A. Yes, sir.

Q. Those you have named? A. Yes, sir.

Q. Please name the other five. A. The Broadway is one, the Liberty is two, the Columbia is three, the Grand

Circus is four, and the Garden is five. And the Majestic would be six. That is another one that the independents are serving that I forgot to name. 1

Q. Who serves the Broadway? A. The independents. Eclectic Feature Film Company.

Q. Have you, at any time, served them? A. No, sir.

Q. Who serves the Liberty? A. The Famous Players. That is the largest house downtown.

Q. Do they show Famous Players all the time, and nothing but that? A. Famous Players, and generally one reel of Keystone comedy. Keystone is an independent make. 2

Q. Who serves the next one that you mentioned, the Liberty? A. You just asked me about the Liberty.

Q. The Columbia? A. The Columbia is furnished by the Mutual.

Q. Have you ever supplied them with film? A. Yes, sir.

Q. How recently? A. Oh, up to a month ago.

Q. And did you supply them regularly until a month ago? A. Yes, sir.

Q. The Grand Circus. Who supplies them with service? A. They are supplied by the independents. 3

Q. Which independents? A. Well, now, I don't attend it every day. I could not tell you what program they are using every day. The last one they were using out there, they had a bunch of Indians out in front, last week, six or seven out in the street, advertising a film called Hiawatha, the Indian Passion Play.

Q. Have you ever served the Grand Circus? A. No, sir; they never applied to me for service.

Q. Who furnishes the Garden Theatre? A. They are using the Famous Players and a mixed program there.

Q. Have you ever supplied them with film? A. Yes, sir. 4

Q. How recently? A. Up to about a month ago.

Q. The Majestic; who furnishes them with service? A. The Majestic is furnished by the Mutual and the Famous Players.

Q. Have you ever supplied them with service? A. Not in the past year or year and a half.

Q. Until within a year and a half, you have? A. No, sir. Just a minute—we have not furnished the Majestic with a program in about two years.

1 Q. Have you about the same number of customers today that you had a year ago? A. No; I believe we have a few more. That is owing to the number of theatres that are built there. At the present time there are 122 theatres in the City of Detroit alone. They are increasing. There is twelve more under course of construction, and a year ago we did not have a hundred theatres in the city.

2 Q. What are the sources of your information as to the amount of weekly rental done by the independents? A. The managers of the offices. When I was requested by the home office to get this information, that is, the home office of the General Film Company, I called up the manager of the Mutual Film Company and had a conversation with another official of their company, who informed me what they were doing, and I also called up a gentleman that is the bookkeeper, and the man who handles the accounts for the Universal.

Q. How long ago were you requested by the General Film Company to obtain this information? A. One day last week.

3 Redirect examination by Mr. CALDWELL:

Q. Mr. Grosvenor did not ask you to state the weekly business done by the Mutual and the Universal rentals, although you stated that you could give him the information if he desired. A. I stated I could give it, yes, sir.

Q. Let us have it, will you? A. Why, the Mutual is doing forty-two hundred.

Q. And the Universal? A. The Universal we figure about thirty-eight hundred.

4 Q. I think you have stated that the interest which you have in theatres which you have mentioned, you acquired about seven years ago? A. Yes, sir.

Q. And that interest is a stock interest, or is it control? A. I am a stockholder, but I am not active, and I have nothing to do with the management of them.

Q. You have nothing to do with the policy of the theatres? A. No, sir, the policy is handled by the Board of Directors. There is only one of the theatres that I control.

Q. They are as free to go to any exchange for their service— A. You have seen that. There are three that are using the other programs.

Q. Are you familiar with the extent of competition with the independents in the month of August, 1912? A. I believe so. 1

Q. How extensive was that competition at that time? A. It was very pronounced in our territory, sir. There was an exchange there by the name of the Cadillac, in Detroit, that was later on sold to the Mutual, that was giving us a mighty hard fight. And also, the Michigan Film Company, who were an independent exchange there, and also in the City of Toledo, we had an independent film company there, and also the Toledo Exchange, making things pretty lively for us there. 2

Q. Was the distribution of business between the General Film Company and your competitors relatively the same then as it is now? A. The independents have a great deal more to-day than they had then. A great deal more business. 3

Q. Do you know whether the Michigan Film Company continued in business after their license was cancelled? A. Yes, sir; they continued in business after their license was cancelled, for a couple of years, and they eventually sold out to the Mutual Film Company, and the two offices, the Cadillac and the Michigan Film, were combined in one large office, located in 97 Woodward Avenue, Detroit, under the name of the Mutual Film Corporation. 3

Recross examination by Mr. GROSVENOR:

Q. Mr. Gilligham, you testified on direct examination something about the Michigan Film Company exchange. A. The Michigan Film & Supply Company was the title, Mr. Grosvenor.

Q. Were you referring to the old licensed exchange? A. No, sir, I was referring to them both as the licensed exchange, and when they operated as an independent exchange. 4

Q. Well, you know that their license was cancelled, that is, their permission to do business in licensed film, in June, 1909? A. Yes, sir; I was aware of that.

Q. I wish you would preserve the lists which you referred to on your direct examination, as being a list of the theatres in your territory, in case I shall desire to examine them at a later time. A. I shall be pleased to send it to you, sir.

- 1 IKE VAN RONKEL, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Van Ronkel, where do you live, and in what business are you engaged? A. Moving picture business, Chicago, Illinois.

Q. What branch of the business are you engaged in there? A. Manager of the three offices there.

- 2 Q. Three offices of the General Film Company, you mean? A. Yes, sir, three offices of the General Film Company.

Q. What are the names of those three branches of the General Film Company? A. American Branch of the General Film Company, Wabash Branch of the General Film Company, and City Hall Branch.

Q. And how long have you been manager of those three branches? A. From about the first of August of this year.

Q. Prior to that, what were you? A. The manager of the American Branch, since September 5th, 1910.

- 3 Q. And prior to September, 1910, what were you doing? A. Treasurer and manager of the American Film Service, before it sold out to the General Film Company.

Q. When did it sell to the General Film Company? A. September 5th, 1910.

Q. How long had you been Treasurer and manager of the American Film Service? A. 1906.

Q. When did you first enter the motion picture business? A. About the latter part of December, 1905, as an exhibitor, in a few small store shows.

- 4 Q. Did you organize the American Film Service? A. Yes, sir.

Q. That was a corporation organized under the laws of Illinois? A. Yes, sir.

Q. And was that exchange subsequently, and in the year 1908, one of the so-called Edison licensed exchanges? A. Yes, sir.

Q. Will you state briefly business conditions in the motion picture business in the years 1906 and 1907, before the Edison license arrangement? A. In 1906, when we first started, the business was in its infancy, as we thought, and we made

quite a bit of money. In the beginning of 1907, several more exchanges opened up, and business became demoralized, and conditions became terrible, the exhibitor could not get a program that he could exhibit without interference from his competitor or neighbor, and we were forced to get together. We called meetings of different exchange owners, in fact, were originally the cause of the Film Service Association being formed. At the beginning of the formation of the Film Service Association, we had a little improvement, but not enough to encourage us. Conditions looked very blue and demoralized, in fact, the life of the business at that time was longer than any of us expected.

Q. What were some of the evils of the business in the year 1907? A. The greatest evils were two exchanges supplying the same man, and the sub-renting proposition; three theatres right in a row would exhibit the same pictures the same day. The customer or trade that we were catering to would put up a certain sign, and his neighbor would have it, too, and the trade that we catered to, the public, would go to see a show, and see the same sign next door, and become disgusted and quit visiting the theatres altogether.

Q. Did you attend the Buffalo meeting of the Film Service Association? A. I did not. I had a proxy there.

Q. Did you attend any of the subsequent meetings? A. The two last ones in New York City, at the Imperial Hotel.

Q. How much film were you buying in January, 1909? A. I think we were buying the entire output of everything made. Eighteen reels.

Q. That amounted to how much per month? A. About \$7,200 a month.

Q. Did you favor the minimum leasing requirement in the Patents Company license? A. I did not, sir. It was too small for a buying exchange. An exchange that could not buy more than that ought not to have been in business.

Q. You mean by that you did not favor prescribing a limit, or that you thought the limit was too small? A. The limit was too small. It should have been at least ten reels as the minimum that an exchange should buy per week.

Q. Did you oppose the provision in the Patents Company license requiring the return of film after seven

1 months? A. I encouraged it, sir, as the best thing for the business.

Q. Why so? A. Some of the exchanges would accumulate a lot of junk, or known as junk, scratched or rainy film, and sell it to some little fellow, and he would go around the country and exhibit or rent it, and the people would go into the theatres, and they would see the rainy and worn out films, and they would not patronize the theatres. That was really one of the causes of the selling of my exchange. It was going from bad to worse.

2 Q. How many films did you have on hand at the time of the Patents Company license? A. About 2,000 reels.

Q. What was the condition of them? A. Some of them that I first bought were not in good condition, and some of the later ones were pretty fair.

Q. Do you remember when you commenced to return your film to the manufacturers? A. I don't remember the exact date. But when it was ordered back, we sent some back.

3 Q. What character of reels did you select for the purposes of making your returns? A. The oldest in condition, and the poorest in subject, that the exhibitors would refuse to accept. We always held back the stock of religious and educational subjects to accumulate a library, and held those for religious and educational affairs. The poor ones and partly damaged we returned.

4 Q. With the exception of the reels that had been leased by you, say six months prior to January, 1909, what was the condition of the film that you had on hand? A. The major portion of it was in very bad condition. Our office never sold any film, because we thought it was a bad thing to let these people get hold of this junk and distribute it through the country, and, naturally, you accumulate a lot of stuff.

Q. Could you have sold it? A. We could have, but we would have killed the business, and it was not an advisable thing to do.

Q. By killing the business you mean from the standpoint of the exhibitor? A. And the public.

Q. What percentage of the pictures handled by you in your exchange in Chicago were of the so-called scenic, educational or scientific character? A. In those days, I should judge about five to eight per cent.

Q. Was there much of a demand for pictures of that character in Chicago? A. Not from the exhibitor, the public exhibitor, but from churches, public officers, penitentiaries, insane asylums, and so forth, we supplied quite a few. We supply all of the public places of that kind. 1

Q. So you found no difficulty whatever in accumulating a so-called library of educational and scientific subjects from the stock of film that you had on hand, and which you replenished from time to time? A. We picked out whatever we wanted, and reserved it, and we have got a nice library of that film on hand.

Q. Is it a profitable part of the business? A. Well, medium. 2

Q. Do you get good prices from schools and public exhibitions that you lease them to? A. Well, the educational end of it is not as high a price as the later released film. The prices are only medium from the churches. We do it to help the educational part of it along, to elevate the business. We do not try to charge them as much as the man that is making money off of it.

Q. Did you find that the change from the sale under the former practice to a leasing, under the Patents Company license, made any change in the extent of the business that you did? A. Not a bit. Only it helped us to get rid of the stuff. We had strict fire regulations in our city, and we had accumulated more film than the city would allow us to keep, and it was a good way to get rid of it. Otherwise we would have had to burn it up ourselves. 3

Q. Prior to January, 1909, was it, or was it not, a common practice in your territory in which you operated for two exchanges to serve the same exhibitor simultaneously? A. Yes, sir, it was quite frequent in our territory. Quite an annoyance, and quite a detriment to the business, from both the exhibitors' and the public standpoint. 4

Q. In what respect? A. By one exhibitor having a program advertised, and his competitor, getting from two exchanges, would probably get his reels previous, a day or two, to the other man getting it, and spoil his advertising, and get his public dissatisfied, and naturally put him out of business in a little while.

Q. Did it tend to conflicts in programs, and repeaters?

1 A. Oh, terrible. It would put one of them out of business, if he would not get some relief soon.

Q. Was there much complaint among the exhibitors on that score during that time? A. Yes, sir, they protested vigorously to the exchanges, and we also complained to the manufacturers about the condition.

Q. Did you observe, during the year 1908, that there was competition between the Edison manufacturing and importing licensees, as between themselves? A. I should say there was a very keen competition, sir.

2 Q. In what respect did you observe that there was competition? A. I was bothered daily with solicitors and the publicity in the trade journals, and circulars by the bunch; in fact, we are bothered yet. They advertise films extensively, and send circulars to every exhibitor in the United States, and those, in turn, come in and bother us for a certain film three weeks or a month before it is released.

Q. Does that competition continue today? A. Yes, sir, very extensively. In fact, it was so bad in former years we went to the manufacturers and begged them to quit advertising them so extensively.

3 Q. Can you say whether or not the demand for the pictures produced by the licensed manufacturers is influenced to any extent by the desires of the exhibitor? A. Why, I can candidly state that ninety per cent. of the theatres that open up want our service, where it is possible to get it, on account of our superior quality, the familiarity of the actors—we have been in business quite a while—and they know all the actors, and the trade marks; for instance, Biograph, Kalem, Selig, are all popular, and are known, and the exhibitor wants them. The public wants them. They know them, and they like them,

4 like they know a stock company.

Q. Is there any variation in the demand of the exhibitors for particular or certain makes of licensed pictures? A. Yes. Some licensed pictures are popular this week, or this month, or this two weeks, and then another make becomes popular, as they enlarge, or they improve their quality, or make something out of the ordinary.

Q. I think you stated you sold your exchange to the General Film Company in September, 1910? A. I think we sold it in the latter part of August and turned it over to them September 5th.

Q. State the circumstances under which you made that sale. A. The condition of the business, as I stated before, was becoming demoralized, and it looked like it was the end of it, and we had one General Film Company exchange in Chicago, and we had about 15 other kinds, including ours. So the Board of Directors had a meeting, and we decided to see if we could not sell to the General Film Company, and, as manager, I took the Twentieth Century train and came on from Chicago, and went down to No. 10 Fifth Avenue, and had a meeting with Mr. Kennedy. He said, "What are you doing here?" I said, "I have come to see about selling my exchange." He said, "We don't want any." I said, "I have got a good one, and if it is handled rightly, it can be kept alive. But, under the circumstances, the conditions are very bad; I am working night and day; I go to bed at night with a hundred customers, and wake up the next morning with forty." He said, "Do you know what you want for it?" I said, "Oh, yes." I said, "Naturally, I will want more than you will give me." Everybody does. However, I sold it to him for \$10,000 more—\$9,500 more than the directors decided I should get. So I wired them, and they were very much pleased.

Q. At what price did you sell? A. Forty-nine thousand five hundred dollars. We were asking \$25,000 in cash for it about a month before we sold to the General Film Company, and we had 25 shares of stock, and we thought a thousand dollars a share was a pretty good price. And we got \$49,500, so we thought we were doing pretty good.

Q. Had the exchange business in Chicago been profitable for some time prior thereto? A. In 1906 it was very profitable. It kept going backwards. Otherwise we would not have wanted to have sold it. It did not look good to us. We thought it was near the end.

Q. Was it profitable in 1909? A. We were making very little money then.

Q. Were any threats made by anyone connected with the General Film Company or the Motion Picture Patents Company that, if you did not sell, your license would be cancelled? A. No, sir. I have my license yet. I have my trade-mark and name. The American Film Service. We only sold the assets, the reels and the picture machines.

1 We still kept our name. We could have gone into business.

Q. Was there any agreement between you and the General Film Company, express or implied, that you should not go into the exchange business? A. Nobody asked me anything like that. I would not have sold out under those conditions.

Q. You were aware of the clause in the license agreement that permitted the Patents Company to cancel your license on fourteen days' notice, without cause? A. Yes, sir.

2 Q. Did that have any effect on your mind in determining whether or not you would sell? A. No, sir. As long as I ran business on business principles, there was no danger of their cancelling my license.

Q. Suppose you had been cancelled, was the supply of pictures turned out by the Universal and Mutual and others sufficient to enable you to go into the exchange business? A. We could have went in the next day, sir. Several of them did go in after that, and are still in.

3 Q. At the time you sold, can you state how many independent exchanges were operating in Chicago in that territory? A. I should judge, about ten or twelve.

Q. Had the General Film Company commenced operations in your territory at the time you sold? A. Yes, sir; there was an office there.

Q. Did that fact have anything to do with the sale? A. If they had all been run like that one, I would have stayed in the business myself. That was the cleanest competitor we had.

4 Q. What is the territory supplied by the three branches of the General Film Company operating in Chicago? A. We cover the City of Chicago, of course, Cook County, and down the State as far as Springfield. We do not go into Springfield.

Q. Where is Springfield served from? A. From the St. Louis branch. We supply a small portion of Indiana, a small portion of Iowa, up the peninsula of Michigan.

Q. And do you supply any part of Ohio? A. No, sir.

Q. What part of Michigan do you supply? A. The upper peninsula.

Q. Are you familiar with the territory supplied by the Detroit branch of the General Film Company? A. Yes, sir.

We do not come into that territory. They do not go into the upper part of Michigan at all. We do not go into their territory. In the upper part of Michigan—they cannot reach it as good as we can, on account of the express conditions and train service, and so forth. It is much more convenient and quite a saving of time on the shipment of films, to serve from our Chicago office, so we go after that business and supply it if we can get it.

Q. How many customers are supplied in the territory served by the Chicago branch of the General Film Company within the territory of the Detroit branch? A. That is not the Detroit branch territory at all. They cannot reach it. It is just like as if it was a separate State.

Q. Mr. Gilligham has stated that a small number of customers in his territory, not exceeding 30, are supplied by the General Film Company. A. He means in his State. In the State of Michigan. The territory that he cannot reach on account of the railroad service, I think Mr. Gilligham has reference to. While it is in the State of Michigan, it is in a separate section altogether.

Q. Who are your principal competitors in Chicago? A. We have three independent exchanges using the Universal program, that is, the Standard, the Anti-Trust, and the Laemmle Film Exchange, are using the Universal program. We have two Mutual corporation offices. We have the Famous Players, we have the General Feature Film Company, and about fifteen other feature wild-cat companies.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2 o'clock P. M., of the same day, at the same place.

1

NEW YORK CITY, December 8, 1913.

The hearings were resumed, pursuant to adjournment, at 2:00 o'clock P. M., December 8, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon IKE VAN RONKEL, resumed the stand.

2

Direct examination continued by Mr. CALDWELL:

Q. Do you know how many theatres, motion picture theatres, there are in that territory? A. Yes, sir, approximately thirteen hundred theatres.

3

Q. Now, what are the sources of your knowledge on that subject? How did you find out the number? A. In the City of Chicago, all theatres are licensed. We have about five hundred and fifty in the city. I get that officially from the License Bureau. All outside of the city, in the territory that we cover, our traveling representative makes a report of every theatre in a town, the service he is getting, the price he is paying, where he can obtain it, and if not that, approximately what he is paying, and by that information we have tabulated exactly the number of theatres in the different towns, what they are using, and what prices they are paying. Then, that will make approximately seven hundred and fifty motion picture theatres, located in the territory served by these three branches, outside of Chicago.

4

Q. Now, how many motion picture theatres are supplied in that territory by the three branches of the General Film Company? A. About five hundred and ten customers.

Q. Do you know how many customers in that territory are supplied by the Mutual? A. Within a few. I couldn't give the exact number. I could approximate the number they are supplying.

Q. About how many? A. Three hundred and fifty, in two offices.

Q. How many customers in that territory are supplied by the three offices of the Universal? A. Approximately four hundred.

Q. Do you know how many customers are supplied in

that territory, by the Famous Players Film Company? A. 1
 The Famous Players are supplying, anyhow, fifty customers, but I want to make that plain to you. The Famous Players are really supplying some of the customers that both the Universal, Mutual, and myself are supplying. It does not make more customers, but they are supplying some of the same customers.

Q. What is the practice in that territory as to the service furnished by the Famous Players? A. The Famous Players release one picture each week, and a customer may take from me six days, and one day from the Famous 2
 Players, and he may take six days from the Mutual or Universal, and one from the Famous Players, and they may be supplying one day of the week the same customers we are supplying.

Q. Their program comprises an entire evening's entertainment, or program? A. Yes, sir, a four or five-reel program, star feature, at fancy prices, and there are probably fifty customers that they are supplying at forty dollars each, making two thousand dollars in rental, I should judge, coming to them at present.

Q. Do you know how many exhibitors are supplied by the General Film Feature Company? A. They have about 3
 one hundred customers, at, I think, about twenty dollars apiece, making two thousand dollars.

Q. Is there any connection between the company known as the General Film Feature Company, and the General Film Company? A. No, sir; none whatever. They handle nothing but the independent films, and feature film is all—I was going to say, in their customers, they do not handle them the entire week either, and they don't have a hundred different customers from the others—we are supplying only about thirteen hundred customers 4
 in that territory—that is, the three rival exchanges are supplying that many. I wish to correct a statement in reference to the Upper Peninsular territory of Michigan. The idea I tried to convey to you as to the General Film Company supplying them outside of the Detroit office, but when the office was moved from Chicago to Milwaukee, the Milwaukee office supplied this Upper Peninsular—most of them, we transferred them to that office in Wisconsin, so they are being supplied from there. That will make

1 a difference in the total number. I thought I would correct it, for when the Milwaukee branch shows up, its customers would be included.

Q. Now, what other special feature exchanges are operated in your territory? A. We have about fifteen others that are small, don't amount to nothing, probably all of them jointly have two thousand dollars of rental, and probably supply a hundred exhibitors, all of them combined.

2 Q. Now, in view of the business measured by the revenue, about what percentage of the business in your territory is done by the special feature companies? A. By the special feature companies, I should judge, about fifteen or twenty per cent.—fifteen per cent.

Mr. GROSVENOR: You mean, of the gross business, in dollars and cents?

3 The Witness: Yes, the gross business. They have all individual customers, as I have explained before, they are exhibitors who are supplied by all three of the exchanges, and they, in addition, get the features from the feature companies.

By Mr. CALDWELL:

4 Q. Do you know about what the Famous Players Company charge for their service? A. Yes, sir; they have different priced features. One of their Famous Star Films is \$50 a night, that is, in my territory; the second grade is thirty-five dollars, and the ordinary, is twenty dollars a night, and so it averages about thirty-eight to forty dollars a night.

Q. Will you state what the average cost of service in your territory is, that is furnished by the General Film Company? A. About forty-five dollars a week.

Q. So that, for their first-class features, they will get more for one night than you will for an entire week, based on your average? A. Oh, yes.

Q. The competition provided by the Special Feature Film

Service people, in point of actual revenue, is quite formidable? 1

Mr. GROSVENOR: Objected to as leading.

A. The competition between the independents and us is very keen. They are going after our customers continually, and we are trying our best to hold them.

Q. Have you your territory mapped out in any way showing the theatres supplied by your branches, and the theatres supplied by the Universal, and those supplied by the Mutual? A. No, sir; I go wherever I want, any distance we can ship, where we get good shipping facilities. All of us cover the same territory, and fight as hard as we can for the business. 2

Q. Have you a map of the City of Chicago? A. Yes, I have a large map.

Q. Now, explain? A. I have a large map of the City of Chicago—a Rand & McNally's map of Chicago—and I use three different colors of pins—

Mr. GROSVENOR: Have you that with you? 3

The Witness: No, sir. It is a very large map.

Mr. GROSVENOR: Objected to as immaterial, and as not affording an opportunity for proper cross examination—

Mr. CALDWELL: I am not offering the map in evidence. I think the description he will give, will give you a map, the way in which he explains it, that will be available for all purposes of cross examination. You may proceed, and describe what you mean by a "map." 4

The Witness: We have a large map, a framed map, on the wall, in a wooden frame, and we use three colors of tacks, or pins, to denote or notate the exhibitors of the General Film Company, and the Universal, and the Mutual, and in that way we know just where each one is located, and know how many each one has in addition to having the records from the City's License Bureau.

1 By Mr. CALDWELL:

Q. Is every motion picture business or theatre in Chicago indicated, or its position indicated, on that map? A. No, sir; just the theatres. It is a regular street map, a Rand & McNally street map, and, for instance, if we have one on 42nd Street and Grand Boulevard, we put a tack in there, and say, 43rd Street, we have one there, and we put a tack in there, and then we have one around the corner from there, and we put a tack around the corner. The map being small in thickly congested neighborhoods, the tacks are pretty
2 close together.

Are those tacks being constantly changed? A. Yes, sir; as the customers leave us and come back to us—they will leave us one week, and then come back to us the next week, and we use another tack to denote the ones that are building—we go to the Building Department and get an idea as to who is building or putting up the theatre, and we get out after them.

Q. You keep a watch out of the records of the Building Department, to see what new motion picture theatres are going up, so you may get the patronage of that prospective
3 theatre? A. Correct; yes, sir.

Q. And your competitor does the same thing? A. The three solicitors of the Mutual, Universal, and General, generally meet there at the same time.

Q. And it is a race for the business? A. Yes, and a hard fight, too.

Q. Now, after the General Film Company started in business in Chicago, was that followed by an increase in the cost of the service to the exhibitor? A. No, sir.

Q. What was the average price paid, say, in January, 1909? A. Well, of course, at that time I only had charge
4 of one office. Mine compared about the same as it is now, though the customers are getting a great deal more for their money now than they did at that time, as formerly they ran two reels a day, and now they run four a day, and the price has not increased in proportion.

Q. Did you say what was the average cost of service to an exhibitor in January, 1909? A. The office I had charge of, about forty-five dollars.

Q. And in 1908? A. In 1908, I could not be positive, I don't think. I don't think we had time to find out. We

were kept busy knowing how many customers we had. Some of them would jump the traces over night. We would go to bed at night with a hundred, say, and the next morning have only sixty. So we could not keep any trace of it. 1

Q. Can you state whether or not the cost of service to the exhibitor was increased after the formation of the Motion Picture Patents Company? A. It was not.

Q. Is the exhibitor getting more reels for the same price, at the present time, than he was getting in 1908 and 1909? A. To answer that broadly, when the business started, they ran one reel probably twice a week, for which they paid higher, with an investment of about \$200 to us. Today, we are supplying them an investment of about \$2,800, for about the same price; that is, for \$25, or \$35 a week, four reels a day, when they formerly run two reels a week. It gradually ran from two reels a week to two daily, and from two daily to three daily, and from three daily to four daily, and they are paying about the same for twenty-eight that they formerly paid for two. 2

Q. Is there any difference in the character and quality of the pictures furnished then and now? A. The quality and character of the pictures are very much improved; in fact, they are works of art, whereas formerly they were pictures of train robberies and escapes from Sing Sing, railroad hold-ups, and now we have dramatic plays, educational, and the Panama Canal, and the quality has greatly improved. 3

Q. Has there been any improvement in the character of the motion picture theatres, structures, and exhibiting accommodations, within the last few years, in Chicago?

A. We formerly had store shows, of from one hundred and fifty to one hundred and eighty-five seats. Today we have theatres costing from eighty to a hundred thousand dollars, and seating from six hundred to a thousand people, and built from the ground up for motion picture business, and continually they are building. In private residential neighborhoods they are building theatres costing from forty to fifty and sixty thousand dollars. In Chicago they are not built as large as we would like to have them, because of the fire and building restrictions; you cannot build a theatre having more than two hundred and ninety-nine seats, unless you allow ten feet on either side. So there 4

1 are a lot of fine theatres seating only three hundred to five hundred that have cost a hundred thousand dollars.

Q. To what extent have the old store shows been superseded by substantially built theatres, designed for the motion picture business? A. The old store shows have practically become very, very extinct. They are all gone; no one in that business any more; all turned into stores for other lines of business, and have other lines of business in them, and the new theatre has come into the neighborhood, and gradually gotten all the business. We also
2 have had, in that same time, a few fine theatres, like Klaw & Erlanger's Colonial, and McVickers, in Chicago, where they use pictures and vaudeville, and Klaw & Erlanger's best house is called the "Colonial Nickellette."

Q. Prior to the formation of the General Film Company, do you know whether or not it was a matter of common occurrence for one exchange to threaten an exhibitor if he didn't take service from that exchange, that the exchange would put in a competing theatre that would supply such a superior character of service to its competitor that he would be put out of business? A. All I could
3 answer that on is that the individual customers would come in and say, "So-and-so was around today and told me if I didn't take his service, he would put in with my competitor a first and second-run service and put me out of business," but we never noticed that, but we would give him a better service in order to protect him, and keep the other fellow from getting him.

Q. Was that a common source of complaint among the exhibitors? A. Every week, but we would try to hold our end of it ourselves.

Q. To what extent are you permitted, as manager of
4 the three branches of the General Film Company in Chicago, to select for your patrons the character of pictures which you will show them? A. I am manager of those offices, and that carries with it the privilege of managing that office. I would not have signed my name as manager unless I could buy what I pleased.

Q. Do they attempt to influence you from time to time as to what pictures you should get? A. No, don't even intimate to me what I should buy, or I would not be the manager.

Q. What governs you in the selection of your pictures?

A. The trade. I find out what they want, and we buy them, and what they don't want, we don't buy. 1

Q. Now, to what extent is the exhibitor at liberty to select his own program in your territory? A. All of our exhibitors select their own program. We sell them age.

Q. What is your system of booking? A. Why, we book individually with each customer. For instance, we will give him a ten, or a thirty, or a six-day reel. We don't tell him what it will be, and he comes in and picks out the reel he wants, ten days old, and it may be a drama, and he picks out a thirty-day reel, and it may be a comedy, and he picks out a ten-day reel, and it may be a war drama, or a Western. He does his own selecting. A few country exhibitors, who do not come in, we send the booking to in advance. They say they will run Pathe on Tuesday, and such and such a picture on Friday, and a special feature on Saturday, and we select them according to his request, and make them a booking, and send it to them, and if they see something they don't like, if they will call us up by telephone or notify us by letter, we change it to suit them. We cater after the business and we try to please them. 2

3

Cross examination by Mr. GROSVENOR:

Q. Mr. Van Ronkel, do you have any interest in any theatres exhibiting motion pictures? A. I have not, sir.

Q. When did you start in the business, the motion picture business? A. The latter part of 1905 or the beginning of 1906.

Q. You went in with a small expenditure of money, of capital? A. In the theatre or film business?

Q. I say, in the motion picture business? A. I had plenty of capital when I went in—I didn't need it to invest. We used store shows, and we rented a store and paid sixty dollars a month, and I think the cost to me was \$1,650 to equip about four theatres. 4

Q. And when was that? A. The latter part of 1905, December. We opened it, I believe, in January, on January 6th.

Q. Had your investments in the motion picture business proved profitable from 1906 down to 1909? A. I was an exhibitor in 1906, and I went into the exchange business

1 later and disposed of the theatres; I saw I could not carry water on both shoulders; that I could not be an exhibitor and a renter, and do justice to my exhibitors, and I disposed of my motion picture theatres, which I should have kept—

Q. You decided on the rental business? A. Yes, sir; I made a mistake. I should have decided on the other end of the line.

Q. Now, let us try to get down to the facts. You went into the rental exchange business in the end of 1906? A. Yes, about the middle of 1906.

2 Q. And did that rental exchange business increase and prosper, from 1906 down to 1909? A. No, sir; it did not. It did, in 1906—very profitable—

Q. How about in 1907? A. It kept getting worse, more exchanges went into the business, and more cut-throat methods were adopted.

Q. Too much competition, was there? A. Not legitimate competition. It was unfair methods, really, that was putting the business out of business.

3 Q. And so, you did not make much money in 1907, owing to this competition? A. Not owing to the competition, but owing to the unfair methods and tactics used by some of the exchange men.

Q. Was it unfair competition? A. I don't call it competition—I call it cut-throat business methods. I can meet any kind of fair competition anywhere.

Q. Did you take part in the formation of the Film Service Association? A. No, sir, I didn't, but I was a member of it.

4 Q. And are you able to testify to the purposes attendant on the formation of that association? A. Not as clearly as I should be. What we wanted to do was to stop sub-renting, to stop the cut-throat methods of competition, and for that reason, it was organized, I can say.

Q. And the reason you joined it, you thought it would be a means of stopping competition and improving business?

Mr. CALDWELL: That is objected to.

The Witness: Not to stop competition, but to stop the wild, cut-throat competition.

By Mr. GROSVENOR:

1

Q. You thought it would make the competition legitimate, whereas, formerly, the competition had not been legitimate? A. It was not competition, it was wildcat cut-throat business methods.

Q. You didn't consider those methods due to the competition prevailing, but being entirely apart from any competition— A. I don't understand that.

Q. How do you distinguish these methods you characterize as "wildcat," from being incidental to the competition prevailing? A. Why, that is very easy to tell the difference, you know—if a man stabs you in the back, and then, if he comes again, and fights you face to face, you would know one was fair, and the other one was quite unfair, would you not?

2

Q. You thought, when you formed, or went into, this Film Service Association, it would stop these things you complain of? A. Improve the condition of business.

Q. And what were some of these wildcat methods or practices, which the Film Service Association was to stop— A. Several of them, plainly, stealing of reels, and going through the country and renting them, and several of them buying them at cut prices, and sending them down to Davenport, and opening up sub-rental offices.

3

Q. Was not one of the troubles in the latter part of 1907, that the prices were too low? A. No, sir; not a bit in the world. My prices averaged the same when I was in business for myself as they are now.

Q. Were the others selling them at prices so low that it interfered with your prospering as you tried to maintain legitimate prices? A. I don't think that they had any price. The arrangements were so bad that we could not get any information from them that was reliable, and could not tell about the price.

4

Q. That is, the rental exchanges sold at too low a price in the latter part of 1907? A. That was not the objectionable part; I don't know the prices they did receive. We had to watch our own business at that time.

Q. I am not asking you whether that was the objectionable part, but I say it is a fact, that in the latter part of 1907, the rental exchanges in Chicago were selling at a very low price— A. I couldn't say that, sir.

1 Q. And this selling at a low price, or a very low price, was below what you thought was legitimate, was one of the wildcat methods you complained of? A. No, that is legitimate competition, for a man to sell at any price he can, if he buys legitimate goods of the same quality I sell—

Q. What were the wildcat things that you objected to? A. They would steal the films and send them out into the country, and sub-rent them, and put up a film so scratched that it would make you blind to look at it, and the public would not come into the theatres, and it jeopardized the business—that is one of the wildcat—

2 Q. When the Film Service Association was formed, didn't prices improve for a few weeks? A. Mine averaged the same now as then.

Q. When the Film Service Association was formed, didn't the business of renting films improve? A. Temporarily, at the beginning of the Film Service Association, they did behave themselves, some of them, a little better, and tried to live up to a little working agreement that they would not allow sub-renting—that was one great danger in allowing sub-renting—but they only temporarily lived up to it, and in two months, it started as it was before.

3 Q. Isn't it a fact, Mr. Van Ronkel, that after the Film Service Association, the prices for leasing films did improve for a time? A. It reduced with me—it reduced our price about fifteen per cent.

Q. You had been getting a better price than the others? A. Yes, sir.

Q. That is, when the Film Service Association was formed, it did improve prices for many of the exchanges?

A. I couldn't say. I say it did cut my price about fifteen per cent., on all of my customers, or a majority of them.

4 Q. What happened two weeks after, or two months? A. I continued to charge my trade my average, and for that reason I came here to New York to see Mr. Kennedy and offered my exchange; I could not stand the pressure.

Q. Did you offer your exchange two months after that to the Patents Company? A. No, sir—

Q. And did you offer it two months after the Film Service Association was formed? A. I think, a month afterward. I think, before it was formed, to some one—we offered twenty-five shares of stock, I think to one particular man—I think,

Mr. Harding, of the Edison Company; tried to sell him six, and we tried to sell some to outside parties. 1

Q. When the Film Service Association was going on, did you deal in the films of the Biograph Company? A. I did not, sir.

Q. Did you deal in the film of the Kleine Company? A. We did not, sir.

Q. There was active competition between Kleine and the Biograph Company between the period in 1908 and the so-called Edison licensees? A. Yes, sir. But the reason we didn't buy the Biograph film was it was so poor and rotten we couldn't use it. 2

Q. Had you ever shown them before that? A. We bought one or two, and when they would make anything new that was presentable, but the majority of the stuff they made was very, very poor.

Q. Was the Biograph stuff rotten, too, in that year? A. Yes. I remember distinctly our getting "The Arcadian Elopement"—and we bought several prints of it, and I had no place to look at it, and I told them to send it over, and we gave it to one of our first-run customers, and the first-run customer brought it back—he would not have it—and said to take it and throw it in the lake, and Mr. Lewis would not take it back, and he sued me for it, and he beat me. 3

Q. Was the reason that you did not handle Biograph films in 1908, while you were a member of the Film Service Association, the fact that the Biograph films were poor films? A. Yes, sir; that is correct.

Q. Then, the only reason that you observed the provision of the Film Service Association by-laws of the Edison licensees' agreement, and showed only the Edison licensees' pictures, was that the other pictures, namely, the Kleine pictures and the Biograph pictures, were rotten, to use your expression? A. No, sir. I said the Biograph and the Kleine—some of the Kleines were very fair, and whenever they were, we bought those, but after the Edison license agreement came out, we had no occasion to have them. We had enough for the business. The business was going down, and it was at its low ebb at that time, and we had plenty, without buying anything else, and the Biographs were rotten. 4

Q. When did Kleine's become good? A. Kleine was the same all the time. He had what is known as the foreign

1 films, and Pathe Freres made enough foreign pictures to supply us.

Q. Was the reason that you did not show the Kleine pictures in 1908, the fact that the Kleine pictures were poor, or the fact that you thought the Edison licensees good enough? A. I did not say anything about the Kleine pictures being poor. I told you the Biograph pictures were rotten.

Q. Now, Mr. Van Ronkel, did you handle the Kleine pictures in 1908? A. That is after the Edison—

2 Q. After the Edison licensee arrangement was formed? A. No, I did not.

Q. And did you show the Biograph pictures after the Edison licensees' arrangement was made? A. No, I did not.

Q. The reason that you did not show the Biograph films, was what? A. They were too poor.

Q. And the reason you did not show the Kleine pictures, was what? A. We had enough foreign pictures, as Pathe Freres was making enough foreign pictures for us, and we did not need the other foreign pictures.

3 Q. After the Patents Company was formed, did you use and begin to show the Biograph pictures? A. The Biograph pictures, in the fight for life, in the competition, improved in quality immensely, and at the time they joined the Patents Company, as you call it, their quality had improved greatly, which you easily can verify anywhere in the country, and we did buy them, and they were very popular. They are so to-day.

Q. Then, the Biograph Company pictures did improve in that period of competition? A. I think they did improve when they got new Directors. Mr. Kennedy came in, and Mr. Griffith, this big Director, and they improved the quality directly.

4 Q. But they did not reach a point perfect enough for you to be willing to sell them to customers, until the Patents Company was formed? A. My customers would not take them, sir.

Q. I say, they did not reach a point of perfection, high enough for your customers to take them, until the Patents Company was formed? A. I did not keep track of that. I

did not keep track of when they did reach that quality. I had all I could do to run that office. 1

Q. As a matter of fact, you did not think that they had reached a high enough state of perfection until the Patents Company was formed? A. I heard some independent people say that the "Greaser's Gauntlet" was very fine, only very sensational.

Q. Then, the reason you did not show the Biograph pictures in the latter part of 1908, or before the Patents Company was formed, was not that you had signed this Edison license, which prevented you from showing either the Biograph or Kleine productions? A. I would not say that. This is a free country. I could buy whatever I felt like. 2

Q. But you did not? A. I bought all I could afford to buy.

Q. But you simply did not feel like showing any of the pictures of the Biograph and Kleine make? A. I stated to you that the Biograph was so rotten, and that the Kleine films—we had enough foreign films made by Pathe. I do not see how you could interpret it any other way.

Q. But you said the Biograph Company became good before the Patents Company was formed. A. I heard they made the "Greaser's Gauntlet," which they said was very fine, but it was very, very sensational, and as I was supplying some very high-class trade, they did not care very much for it. We were then on an uplift movement, trying to get better. When we first started, they started to make the "Great Train Robbery," the "Escape from Sing Sing," and things like that. The antagonism from the preachers and the public press was terrible, which you can see by reading back, and I did not care to go into that sensational film. I will even say that the Biograph Company makes some very sensational pictures to-day, and the City of Chicago kills a lot of the things they make. They are very fine photographically, though, in their quality. 3 4

Q. They run more to the dime novel kind of story? A. Not exactly, but the producer has a brain that runs in that channel, probably, and that is the reason he produces that kind of pictures. I never asked him.

Q. The General Film Company had a branch in Chicago before you sold out to the General Film Company? A. It did, sir.

1 Q. How long had that branch been doing business there?
A. I should think, about three or four months.

Q. Were you the last of the so-called licensed exchanges to do business in Chicago? A. I think not. I am not positive, but I think the Standard and the H. & H. was still in business after I sold out. I am not sure about that.

Q. While you were doing business as the so-called licensed rental exchange with the different manufacturers, they each of them leased or distributed their films to you at the same price; is that not correct? A. Yes, sir.

2 Q. And you sub-leased to the exhibitors all their films at the same price? A. Yes, sir. Not exactly the same price. According to age. You know, the age makes a difference in the price. The novelty part of it.

Q. Yes. But where you had an Edison film that was six months old, and, at the same time, a Biograph film six months old, and an Essanay at six months, you would lease those three at the same uniform price? A. Provided the customer will take any of those makes. We could not lease them unless they would accept them.

3 Q. If you had an opportunity to lease each of those makes, you leased them each at the same price? A. Why shouldn't we? They cost us the same price.

Q. I am asking you whether or not you did it? A. If we could get a customer that would take them, we certainly would do it.

Q. Then you leased them at the same price? A. If we could get a customer to take them, sir.

Q. Today, while you are branch manager of the General Film Company, you get these films from the different manufacturers at the same price? A. Yes, sir.

4 Q. And, in the same way, you distribute them at the same price? A. Yes, sir.

Q. That is, where they are the same age? A. Where we can make a customer take them. We allow our customers to do their own selecting.

Q. How is business done by the General Film Company in getting these films? You send orders to the different manufacturers? A. We have a standing order known as the staples, that the people are constantly inquiring for, and asking for.

Q. You send this standing order, or keep it with the

different manufacturers? A. Of the popular films that they want. 1

Q. That order stays with the different manufacturers? A. Yes, sir.

Q. And then, as each film is manufactured, it is shipped from the factory direct to your branch in Chicago; is that right? A. Yes, sir.

Q. Your customers, that is, the customers of these three branches, are located in what different States? A. Part of Indiana, part of Illinois, part of Michigan, and a little of Iowa.

Q. And you ship the reels or the film from your different offices, three offices in Chicago, to these exhibitors located in those States? A. Yes, sir. 2

Q. And practically the entire business that you do consists of this business in films; isn't that right? A. Yes, sir.

Q. That is, the business of the General Film Company is the business of dealing in these films? A. Well, I would call ours more, now, a theatrical business. It is strictly a show business, you know.

Q. How much of your total business consists of this distribution or dealing in films? A. We do not deal in films. We rent a show to a man. We give him an attraction. We leave him announce his attraction in advance. A week or two weeks. They give it publicity in the paper, like any big show that you have got here in town. And they give it newspaper notoriety, on the billboards, and so forth, and it is called an attraction. We have got on our packages to the express company: "This is a theatrical attraction, and if delayed, it is of no value." On our shipping labels. 3

Q. What are the gross receipts of the three branches of the General Film Company, per week? A. About \$23,000. The independents, about twenty-nine thousand dollars. 4

Q. Now, of that \$23,000, how much of it is taken in in the form of payments made by these exhibitors for these films which you have sent in the manner you have described? A. That is all paid for, our attractions that we rent to them—

Q. And in using the term "attraction," you mean these

1 films? A. I mean the program for their show—for their night's performance.

Q. And by the term "program" you mean the program, consisting of three or four reels of film? A. Yes; plays, dramas or comedies. Whatever they may be termed.

Q. And by the term "plays, dramas, comedies" you mean these motion picture films, consisting each of a thousand feet or more? A. Sometimes they are less. And we term them as attractions. We book them mostly as a drama, comedy drama, educational, scenic, scientific, and so forth and so on.

2 Q. Now, getting back to the question— A. We don't class them as film at all. We class them all as attractions. Of course, a new man opening up in the business, not knowing, calls them "films," or something like that. But we book them as attractions, comedies, dramas, Westerns, or Shakespearean, Biblical, Cain and Abel, Macbeth, and so forth.

Q. Have you had any little talk with your counsel, Mr. Van Ronkel, about the effect of this decision of Judge Pendleton yesterday or the day before? A. No, sir.

3 Q. Getting back to this question as to whether these things are plays; whether you are in the theatrical business or not— A. We are, yes, sir.

Q. Let me ask you this question. You say you get \$23,000 a week paid in? A. Yes, sir.

Q. How much of that \$23,000 is paid for the rental of these reels, call them dramas, films, or whatever you call them— A. All of it.

Q. And the form in which you send these plays out, educational announcements, or programs, or whatever you call them— A. That is correct.

4 Q. The material which makes them up is motion picture film, consisting of a thousand or more feet, wound around a reel, which is shipped, isn't it? A. It is photographs on celluloid, but would you call, if you get a piece of Eastman film, a kodak film, and still call it film after you have a photograph on it? You would not call it film, would you?

Q. I am asking you how you are doing your business. A. I am trying to explain to you, but you are trying to get me to say something else.

Q. The business you do is shipping these plays, as you call them, being photographed plays— A. Photographed plays, yes.

Q. You ship them from your three branches to these exhibitors? A. Our business is renting them to them. The express companies do the shipping. 1

Q. You rent them, through the express company— A. No, they are the carrier. We rent them.

Q. And when you send them out in this way, you get back this \$23,000, don't you? A. Yes, sir.

Q. And that is the only way you get money, don't you? A. We sell a few machines. A very small percentage.

Q. I think you said, on direct examination, that there were fifteen wild-cat companies in Chicago, today? A. Wild-cat feature exchanges. 2

Q. What do you mean by that term "wild-cat feature exchanges"? A. That is the same term I applied to the exchanges in the former days. They go over to Europe and scour the country for rejected special feature dramas, and so forth, that nobody else wants, after they are ten or twelve months old, and import them here.

Q. They are not companies that give a daily, regular, complete service to the different theatres? A. No, they are not.

Q. How many theatres are there in Chicago? A. 550. One or two more or less—some of them losing their license, and so forth. 3

Q. How many were there a year or two ago? A. About 400.

Q. How many of these are today General Film Company customers? A. We have, probably, 225.

Q. Is that a fair, liberal, or close estimate? A. That is about accurate.

Q. Has the independent competition increased since August, 1912? A. I think it has increased a bit. That is, the new theatres, which are becoming common now, they have a little better program than they had. But the competition is just as keen. 4

Q. How long did you say you have been a branch manager there? A. Since September, 1910. September 5th.

Q. But you have not had all the branches since that time? A. No. Only since August 1st of this year.

Q. So that, ever since you have sold out your business, you became an employee of the General Film Company? A. Yes, sir.

1 Q. And you are an employee today? A. Yes, sir.

Q. Do you remember the warfare between the so-called Edison licensees and the Kleine and Biograph people in the Spring of 1908? A. Yes, sir.

Q. A lot of replevin suits were brought in that time, weren't there? A. Yes, sir. I am not familiar with all the replevin suits. I know there was quite a fight, though, on.

Q. And there were a lot of them brought at one time against the exhibitors? Do you recall that? A. I am familiar, I think, with one. A fellow by the name of Chris Rolenson.

2 Q. Did you have any talk with the manufacturers before those suits were brought? A. No, sir.

Redirect examination by Mr. CALDWELL:

Q. Did your exchange, at any time, ever conduct a licensed branch exchange at Memphis, Tennessee? A. Yes, sir.

Q. What became of that exchange? A. Cancelled by the Patents Company.

3 Q. Were you doing much business there? A. We were not doing—the fact of the matter is, I had a man there that was one of the wild-catters that was robbing and stealing all the money that we took in. I could mention his name, if necessary, but there is no use of mentioning it. But we did not buy the film there, and they cancelled our license, and, of course, it was not an exchange unless we did buy the required amount of film.

4 ALTON TREDICK, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Tredick, and in what business are you engaged? A. Oklahoma City, Oklahoma; branch manager of the General Film Company.

Q. What is the territory served from the Oklahoma branch of the General Film Company? A. The State of Oklahoma, part of the Panhandle of Texas, southeastern

New Mexico, the southern and western parts, rather, of 1
Arkansas, and along the Rock Island to Little Rock.

Q. Who are your competitors there? A. We have the
United Motion Picture Company, owned by the Universal
Film Manufacturing Company; the Mutual Film Corpora-
tion of Texas, the Wichita Film Service, of Wichita; the
Wright Film Service, of Wichita, Kansas; the Mutual Film
Corporation of Texas has a branch at Amarillo, and the Uni-
versal Film Manufacturing Company has a branch at Ama-
rillo; the Universal branch at Fort Smith, and the Mutual
branch at Little Rock.

Q. The first two that you mentioned, the United Mo- 2
tion Picture Company and the Mutual branch of the Mu-
tual Company, do they have offices in Oklahoma City? A.
Yes, sir.

Q. And the General Film Company has not offices in
any of these other cities that you have mentioned, have
they—Wichita, or Fort Smith, or Little Rock, or Amar-
illo? A. No, sir.

Q. So, in the territory that you are serving, you are
meeting the competition of seven other exchanges, inde-
pendent exchanges; is that right? A. There are eight 3
different offices.

Q. Do you know the number of motion picture theatres
in that territory which you are serving? A. Two hundred
and ninety-four is a conservative estimate.

Q. And of that number, how many are being served by
your branch of the General Film Company? A. One hun-
dred and eighteen.

Q. Do you know how many are being served by the
Mutual? A. Approximately, 61 is the number, as closely
as we are able to ascertain, are being served with the
Mutual.

Q. And how many by the Universal? A. Fifty-five. 4

Q. Doesn't that leave 60 unaccounted for? A. Those
are very small theatres that run regularly or irregularly,
and using service from these little sort of junk offices that
are fringed around the territory.

Q. Are any of them served by the General Film Com-
pany, of that 60? A. No, sir.

Q. Have you included in that number any theatres

1 which are being served by other branches of the General Film Company? A. No, sir.

Q. What is the average cost of service to the exhibitor who is served by the General Film Company in your territory? A. Twenty-six dollars and eighty cents, if I am not mistaken.

Q. Do you know what the average cost of service provided by the Mutual and Universal is? A. I am very certain that the average would be almost identical, if not identical.

2 Q. Can you describe the character of the competition that you are having in that territory? A. The character of the competition that we are having in that territory is that from the Mutual and Universal branches, located in Oklahoma City; there are traveling men continually on the road, and they are doing anything other than cutting prices. We are also surrounded by these smaller exchanges, who will rent films for practically any price that they can secure. They are located closer to the smaller customers in the smaller towns, the express charges are small, and they pay express charges but one way, and it is practically an impossibility to compete with them close to their office, on
3 account of the prices which they are charging. The general situation in Oklahoma is one of the most severe competition I have ever experienced.

Q. Will you explain how you book your customers? A. We are booking our customers on a basis of giving to the customer the very best possible service for the amount that is paid; in other words, figuring a pro rata film rental, and distributing the film service as to age, to customers, as they are paying for it. We are not selling service at the present time, in any instance, on age. The booking
4 of customers is practically wholly and entirely the wishes of our customers. I do not believe that there has been an instance at any time where a customer has received any reel that he has not desired and actually wanted to get, for the reason that we book our customers in the booking department, approximately very close to three weeks in advance at the present time, practically all of them, and our advance notices are sent out, on an average, a week and a half to two weeks in advance of the shipment, and until we get familiar with the wishes of the

customer, and follow them, we have constant changes, but, having gotten more familiar with the actual wishes of the customer, we have fewer changes. , 1

Q. You say you are not booking your customers on age. On what are you booking them? A. If I made the statement that we were not booking on age, I meant to state that we were not selling our service on age.

Q. Do you have such a thing in your territory as first-run customers and second-run, and so forth? A. We have in Oklahoma City the first-run customer who uses the film for the first time in Oklahoma Territory, or in the territory of our branch. 2

Q. Then first-run in your territory does not necessarily mean, or does not mean, the day of release, but the first time it has been exhibited in your territory; is that right? A. We very often do not show reels on the release date. The fact of the matter is that more often than not, we do not show on the release day.

Q. Is that due to the remoteness from the source of supply or to local conditions? A. Local conditions do not seem to require an actual release on the release day.

Q. Has there been any great increase in the number of motion picture theatres in your territory within the last few years? A. I am unable to give you any idea of that, as I have only been in the territory since July 2nd. 3

Q. Are there many towns in your territory where licensed service is not given at all? A. There are more towns in the Oklahoma territory that do not use licensed service at all, than I have ever seen. I don't know whether this is a peculiar condition or not.

Q. Why is that? A. It seems to be that the opinion of General Film service, in that territory, is not that it is sufficiently superior to make a man believe he absolutely must have it. 4

Q. Can you recall any towns having one or two theatres, supplied with the unlicensed service, where you have undertaken to get into? A. There is Alva, Oklahoma, and Kiowa, Kansas, which is practically right on the line, both using Mutual service, and we have tried in almost every way possible, to secure their business, as they are very desirable customers, but we have been unable to do so.

1 Q. Why not? A. They seem to feel that the Mutual service is the best service.

Q. Can you recall any other towns besides those two you have just mentioned? A. There is Norman, Oklahoma, where we have had our traveling man, and I have also had personal interviews with both of the proprietors of the two shows, and at one time, during the Summer, there was a third show there, which was using our service, but was put out of business by the other two houses, and I have been unable to secure the business of either one of these two houses.

2 Q. Were you ever in the exhibition business? A. In Spokane, Washington.

Q. When was that? A. In 1908 and 1909, and part of 1910.

Q. What service were you taking, licensed or unlicensed? A. I have always used licensed service in every instance possible.

Q. What licensed exchanges were operating in that territory, at that time? A. At the opening of my theatre?

3 Q. During 1909, and in the early part of 1910? A. In the latter part of 1909, the National Film Renting Company opened in Spokane, and the Montana Film Exchange had been operating for some time in Butte, Montana; the Edison Display Company of Seattle, was furnishing service in that territory, also the Kleine Optical Company, occasionally, and the Morton Film Exchange of Portland, was trying to secure business in that territory.

4 Q. What was your experience in getting service at that time from these exchanges? A. At the beginning of securing service, I had very little difficulty in securing service. The business had but very few theatres, and my business was in demand, and there was more or less competition to secure it. As the time went on, however, I attempted, in the early part of 1910, to either get into the business in a larger way, or to change my condition. I had opened a small theatre which, in the upward trend of the business, rapidly became a—well, I term it a “dump,” a house without any decorations, and very small seating capacity, and the other houses coming along with larger and finer interiors, and more comfortable for the patrons, was gradually putting my place out of business. In attempting to

endeavor to ascertain as to what I could secure in the line of film service, I was hampered by the unreliability of the statements, which I received from the people who at that time were in control of the film situation in that territory. My continual answer to questions was to the effect that if they did give me service, they did not know how long I could keep it. They could give me no understanding in regard to how long I could use the service, and the result was, I just got out of the exhibiting business. I could not stand the uncertainty of any investment.

Q. Did you try the licensed service? A. That was the service that I was trying to secure.

Q. Who were the people that were in control of these exchanges, operating in your territory at that time? A. Mr. Frank Bailey was the manager at Butte, Montana, and Mr. George Grombacher was the manager at Spokane.

Q. Will you name the exchanges at Butte, Montana? A. The Montana Film Exchange at Butte, and the Spokane Film Exchange, at Spokane, were what was known as the Bailey interests.

Q. Were they licensed? A. Yes, sir, they were licensed.

Q. And what was the name of the independent exchange? A. The independent exchange in that territory, was the Pacific Film Exchange, which was operating in Butte and Seattle, and shipping into the Spokane territory.

Q. And who was the controller of that exchange—who controlled it? A. Ray Grombacher, a brother of George Grombacher, was the Seattle manager, and I cannot think of the Butte manager, but it was very common information and experience, that this was controlled by the Bailey interests.

Q. In other words, the Bailey interests, then, controlled both the licensed and the unlicensed exchanges in that territory, at that time? A. Yes, sir.

Q. What about the Amalgamated Exchange? Where did that operate? A. That operated in Portland and Seattle.

Q. That did not serve in Spokane, then, at all? A. No. At the early part of their amalgamation, they served a few customers, but withdrew.

Q. Do you know the reason why they withdrew? A. The reason why they withdrew, was in order to protect their territory from any inroads of Bailey. They had a num-

1 ber of inquiries from the Coast territory, and they finally agreed to cut out any theatres that they had in Bailey's territory, which they divided, in the State of Washington, and eliminate all competition by Bailey, agreeing to withdraw from the Coast territory, and they would withdraw from Bailey's territory.

Q. Do you know whether either of these exchanges were interested in theatres at that time? A. Very shortly after the Amalgamated Film Exchange went into effect, the People's Amusement Company was formed, and they had almost identically the same officials as the Amalgamated Film Exchange, and Bailey, shortly after that, formed the Montana Amusement Company. They proceeded to do every-
2 thing possible to secure all the theatres in the territory.

Q. Do you know how many they secured? A. Mr. Winstock, at one time, was the General Manager of the company, and he informed me that they had 36, and Bailey, of the Montana Amusement Company, also told me at one time, that he had 17.

Q. Were any of those theatres located in Spokane? A. No, sir; none of those. Pardon me, there was one theatre
3 in the back of a penny parlor that Bailey had. Bailey bought a penny parlor in Spokane, and in the back of that, he had a theatre. It did not amount to anything, however.

Q. Do you know how it happened that they got so many theatres in that territory? A. As to the actual details of each transaction, I am unable to state, because I was not officially connected with them. However, they were in a position where they directly or indirectly let out word to theatre men to the effect—

Mr. GROSVENOR: I object to this statement of the
4 witness, he already having testified that he did not know of these various matters, and now he is just giving hearsay and his opinion of what may have transpired.

By Mr. CALDWELL:

Q. Was it a matter of common knowledge in the business there? A. It was a matter of common knowledge.

Q. You may go ahead and state—

Mr. GROSVENOR: What was the matter of common knowledge? 1

Mr. CALDWELL: What he is now stating, as I understand it.

By Mr. CALDWELL:

Q. You may proceed. A. This word that was given to theatres was possibly they would locate a theatre that they wanted to purchase—they did not care to purchase all theatres—but if there was any desirable theatre that they desired to purchase, they would in a great many instances, possibly not all, but I doubt if there were very many instances where they did not do it—by endeavoring to secure the theatre by letting out a rumor to the effect that they might put in a new theatre, or that they might do something, and, of course, being in absolute control of the film situation as they were, it resulted in their securing a number of theatres at prices they could not undoubtedly otherwise have secured then. 2

Cross examination by Mr. GROSVENOR: 3

Q. You are in charge of the Oklahoma office of the General Film Company? A. Yes, sir.

Q. And, I take it, you receive your supplies of film from the various manufacturers, the same being shipped to you direct to your office? A. Yes, sir.

Q. And then you ship the same from your office to your various customers? A. Yes, sir.

Q. Are some of your customers located in the States outside of Oklahoma? A. Yes, sir.

Q. What States? A. New Mexico, Texas, Arkansas, Oklahoma, and Kansas. 4

Q. What per cent. of the gross receipts of your office is made up out of payments received by you from all your exhibitors for the leasing of films which you ship out to your customers? A. About eighty-five per cent.

Q. And what makes up the other fifteen per cent? A. The rental of posters, the sale of advertising matter and supplies incidental to theatres.

Q. Do you sell moving picture machines? A. Yes, sir.

1 Q. Those are obtained by you from the various factories in the East, I suppose? A. Yes, sir.

Q. Do you sell these exhibiting or projecting machines outright to the customers? A. Yes, sir.

(For further cross examination see page 2401.)

2 ELMER R. PEARSON, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Pearson, where do you live, and what business are you engaged in? A. I live in Omaha; branch manager of the General Film Company at that point.

Q. And how long have you occupied that position? A. Since June, 1912.

3 Q. What territory is served from the Omaha branch of the General Film Company? A. Practically all of Nebraska and about three-quarters of Iowa.

Q. Who are your competitors in that territory? A. Well, we have Laemmle at Omaha.

4 Q. What is the name of his company? A. It is the Laemmle Film Service. They handle the Universal program. And they also have a branch at Des Moines. The Mutual Film Company at Omaha also has a branch at Des Moines, and we have the Omaha Film Exchange in Omaha, and there are probably twelve or fourteen smaller feature film companies, and so forth, located in Kansas City, Des Moines and Chicago, that operate in our territory.

Q. Name some of the principal special feature companies that operate in your territory. A. There is the Warner Feature Film Company, and the Famous Players Film Company.

Q. Do they have offices in Omaha? A. No. They are both located in Kansas City, but, then, they operate in our territory, and the World's Best Feature Film Company, the Union Features, Kansas City Feature Film Company, and there are some more; several more, in fact;

but I do not recall their names, all of them. They seem to be springing up every few weeks. It is almost impossible to keep track of them. 1

Q. Do you know how many motion picture theatres there are in the district served by the Omaha office? A. Well, taking all of Iowa and all of Nebraska, there are about 750 theatres in the two States.

Q. Do you serve all of Iowa? A. Well, I do not furnish all the service in Iowa, but I ship to practically all points in Iowa. I furnish about three-quarters of the service that is furnished in Iowa that is licensed. 2

Q. How many theatres in that territory are served by the Omaha branch of the General Film Company? A. Two hundred and fifty. 2

Q. Do you know how many theatres are served in that territory by other branches of the General Film Company? A. I do, very closely.

Q. About how many? A. Well, there is 50 at Minneapolis, 25 at Chicago, about 8 at St. Louis, and a couple from Kansas City.

Q. Do you know how many theatres are served in that territory by the exchanges who distribute the Universal program? A. Well, there are about 225 furnished from Omaha and Des Moines. There may be a very few served from Chicago by the Universal. 3

Q. And do you know how many are served with the Mutual program in that territory? A. About 175.

Q. Do you know how much business is done in that territory by the special feature film companies? A. Well, it is a pretty hard proposition to know very exactly, because there are very few theatres that they supply with their service exclusively, but I should say, conservatively, that they have about a weekly rental in those two States of about \$2,500. 4

Q. What is the practice of serving theatres in your territory by these special feature companies? Do they provide a complete program or only a partial program? A. Well, most of them only a partial program, but the Warner Feature Film Company have a complete program of three changes that they can supply a theatre, and are supplying a few that way.

Q. Three changes a week? A. Yes.

Q. Then there are some theatres in that territory that

1 are taking their entire service from the Warner Feature Company? A. There are.

Q. To the exclusion of the programs of either the Mutual, Universal or General Film? A. Yes, sir. I can name two very important ones.

Q. Will you name them? A. The Lily Theatre, at Lincoln, and the Grand Theatre, at Council Bluffs. They are so close to my office that I know about them, and they have been running that program for quite a long time.

2 Mr. GROSVENOR: I object to the statement "quite a long time," the same being indefinite.

By Mr. CALDWELL:

Q. Explain what you mean by "quite a long time." A. About three or four months. I mean by quite a long time, a long enough time to demonstrate that they can supply a complete program.

3 Q. What is the character of motion picture theatres in the district which is served by your branch, as to size and construction? A. Well, they range anywhere from 200 seating capacity up to as high as 1,800. I should say the average seating capacity would probably be somewhere about 350 or 400, and, of course, they vary in appointments as well. Some of them are very elaborate theatres, and, of course, a great many are of very cheap construction, and, in some of the smaller towns particularly, they are just what we term ordinarily as store shows. They have a storeroom, and have put in some seats, and are operating as a picture show.

4 Q. Do you know how many theatres there are in the City of Omaha, where you are located? A. It is either 29 or 30.

Q. And of that 29 or 30, how many are supplied with the General Film Company program? A. It is either 16 or 17.

Mr. GROSVENOR: Do you mean 29 or 30 theatres that show every day different moving pictures?

The Witness: Yes, operating regularly with moving pictures.

By Mr. CALDWELL:

1

Q. And what other large cities are there in your territory, outside of Omaha? A. Council Bluffs.

Q. What is the situation there? A. I think there are nine—positively eight, and I think nine. I furnish two there. The General Film Company furnish two there.

Q. Two out of the nine? A. Yes.

Q. And what is the next largest city? A. Lincoln.

Q. And what are the conditions in Lincoln? A. There are seven theatres there. We furnish four of them. And at Sioux City there are eight theatres, three of which are furnished by the General Film Company. In South Omaha there are six, of which the General Film Company furnish two.

2

Q. Can you recall any other large towns that you serve? A. Well, Iowa City, Iowa, about 10,000; there are five theatres there. We supply two of them. Cedar Rapids, Iowa, I should judge, about 35,000 people; they have approximately 10 theatres there, and we supply four of them. And Hastings, Nebraska, about 10,000; there are three theatres there, and we are supplying two of them. Grand Island; there are six theatres in Grand Island, of which we supply three. Fremont, there are two, and we supply one there. Norfolk, Nebraska, there are three theatres, and we supply one. There really are not very many large cities. I can mention some small ones, ones having population of about 7,000. There are two theatres in Columbia, Nebraska, of which we supply one.

3

Q. Are there any towns in your territory having one or more motion picture theatres where you do not supply any? A. Yes, sir, there are.

Q. Can you name some of those towns? A. There are quite a number of them. Jefferson, Iowa.

4

Mr. GROSVENOR: How large?

The Witness: About 2,000, I should judge. There are two theatres there. It may be larger. It may have 2,500. Two theatres there, both of them—one of them using the Universal program, and the other one the Mutual program; and I have endeavored several times to place our service in there at the same price, and even granting the same

- 1 age of service as the other two programs, and had both customers agree with me that our service, at a given age, was in better condition than the service they were using, but they said they figured the subjects of the independent program were more attractive to their patrons, and would not run our service for that reason. We have quite a number of smaller towns with one theatre, where I have offered them our service at the same price as the service that they were using, and they have refused it, with the statement that they preferred, or their patrons seemed to prefer, the other service, although, in a good many instances, they have agreed with me that our program was the best, but their particular trade seemed to demand the other. It seemed to be a little more sensational.
- 2

By Mr. CALDWELL:

- Q. Have you found that it happens with more or less frequency that you will get a customer that is being served by the Mutual or Universal, and vice versa; that they will get a customer that is being served by you? A. Oh, yes, there is a fluctuation of ten to fifteen accounts each week back and forth, of course.
- 3

Q. Is there much competition among you for the business of new theatres that are going up? A. Yes, indeed.

- Q. Explain to us how you go after that business. A. Well, we keep in as close touch as we can with conditions. Sometimes some of our customers will find out that someone is going to open up a new theatre at some point. We find out about it in that way, and in various ways our road men find out that someone is going to start in the business. We either send a man to see him, or get in communication with him through the mail, trying to get him to come and see us, and, if possible, place the equipment for his theatre with him, and then try to secure his business for film service, and in every way try to give him advice as to about what he should use, and so forth, and, of course, resorting lots of times—a fellow will go from one place to another, and he will be deceived by the price he is quoted, and in various ways it is pretty hard for a new fellow starting in the business to distinguish the difference in prices and quality, and so forth, you know. We use
- 4

every fair, honest effort we possibly can to secure an exhibitor's business, of course. 1

Q. How do your prices compare with the prices charged by the Mutual and the Universal for the same age of film?

A. Well, I should say ours was probably—we are probably a little higher. Our service, though—we keep our films, I think, in better condition than they do. We have a department of inspection of machines, and so forth, and an expert in charge, who visits these theatres and keeps their machines in shape, so our film will stay in better condition longer, and it has proven that they are in very much better condition, at the same age. 2

Q. Then your branch makes it a practice to send out inspectors to examine the projecting machines in use in all of the theatres of your customers? A. Yes, sir; I have felt that a great deal of the projection, and especially in the smaller theatres, and even in some of the larger ones, was very poor, and we would help him to get more business, our program would appear to a better advantage, if projected properly, and by sending an expert out there, he can repair the man's machine and make suggestions and actually help to install the devices, and so forth, that will get him better projection. 3

Q. Have you found that it has tended to improve the condition of the film after it has been returned by the exhibitor to your branch? A. Very much, yes, sir. Very much. The machines getting out of adjustment, destroys a great deal of film. It gets them scratched up.

Q. As far as you know, then, that practice is not resorted to in your territory, by your competitors? A. It is not.

Q. To what extent is the exhibitor at liberty to select his own program, in your office? A. Well, we have the advance booking system. We book all of our films, at least a week in advance, and from that to two weeks, and each exhibitor is permitted to send in a list of what—or, rather, we really solicit his sending in a list of the films he would rather have, as, of course, we want to give him the film that he really wants; if it will make him more money than some other film, why, we want to give him that particular film, and the booking man uses that list as a guide when he is booking that program. The program is then sent to him as it is intended to come to him, and, of course, if he finds any film in the program that he does not like, and 4

1 wants a subject changed, he notifies us by first mail, telephone or telegraph, and we cheerfully make the change for him.

Q. Do you find that, as a rule, you can, and do make those changes in the program? A. We do.

Q. Who is the manager of the Kansas City Feature Film Company? A. Mr. A. D. Flintom.

Q. Is Mr. Flintom interested in any other independent or unlicensed exchanges? A. Yes, sir. He also operates the Famous Players Film Company at that point.

2 Cross examination by Mr. GROSVENOR:

Q. You have been in the business for how long? A. Since February, 1911.

Q. In what business were you engaged prior to February, 1911? A. I was in the fruit business, hardware business—

Q. That date marked your entry into the film business? A. It did.

Q. And your entire experience has been with the General Film Company? A. Yes, sir.

3 Q. What per cent. of the weekly gross receipts of the branch exchange of the General Film Company, of which you have charge, is made up of the payments received by your branch from the various exhibitors, in return for the motion picture films or plays which you distribute to them? A. For rental, I should say, on a general average, I suppose, it would be somewhat a trifle over ninety per cent., although there are some weeks when it comprises all of it, or practically so.

4 Q. And these films, motion picture films or plays, are scenarios, is that what you call them? A. Scenarios reproduced on film, yes, sir.

Q. They are received by you by express from the factories of the various manufacturers? A. Yes, sir.

Q. And that is the only way you do get them, isn't it? A. Well, parcels post, of course. I suppose it means the same thing.

Q. None of them are made there in Omaha? A. No, sir.

Q. And they come from as far as California, from the studios there, and the studios in New York? A. Well, I

don't believe we receive any from California. They come from the factories and studios in the East. There are a great many of them made in California, that is, photographed in California, but I do not believe that we get any shipments from there. They are made up in the Eastern States.

Q. Then, you distribute them among your customers, the exhibitors, located in the States of Nebraska and Iowa?

A. Yes, sir.

Q. And in any other States? A. Well, I have eight or ten customers in South Dakota.

(For further cross examination see pages 2407 and 2424.)

WILLIAM C. PRELLER, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Preller, where do you live, and in what business are you engaged? A. I live in Minneapolis, and I am a branch manager there, of the General Film Company.

Q. Are you the manager, or did you speak about being acting manager? A. No, I am the branch manager.

Q. How long have you occupied that position? A. Since October, 1911.

Q. What is the territory served by that branch? A. The State of Minnesota, North Dakota, part of South Dakota, part of northern Iowa, northwestern Wisconsin.

Q. And you serve both North and South Dakota? A. Yes, sir.

Q. Or just certain portions of North and South Dakota? A. Why, I serve all of North Dakota; that is, houses that have licensed service, and part of South Dakota. Mr. Pearson handles, I think, about ten houses in South Dakota, with General Film Service.

Q. Who are your competitors in that territory? A. Laemmle, with the Universal.

Q. What is the name of his company there? A. The Laemmle Film Service, using the Universal program, and the Mutual Film Company, Incorporated. Those are the

1 two strong competitors. And we have the Warner Feature Film Company, the Famous Players.

Q. Is any part of your territory served by the branch of the Universal conducted at Des Moines, Iowa? A. Yes, sir.

Q. And by the Mutual branch at Des Moines? A. Yes, sir. That is, in Iowa, only.

Q. So that you are competing in that territory with four regular exchanges? A. Yes, sir.

2 Q. What about the competition, if any, from the special feature film companies? A. Well, they are well represented. I could not possibly enumerate them all.

Q. Name the more important ones with whom you come in competition. A. I spoke of the Famous Players, and the Warner Features. The Union Features.

Q. Have the Famous Players an office in Minneapolis? A. Yes, sir.

Q. For the regular conduct of business? A. Yes, sir.

Q. And the Warner; have they an office there? A. Yes, sir.

3 Q. And name any others that have offices in Minneapolis? A. Union Features, and Minneapolis Feature Company. That is all I can recall at the present time.

Q. Do you know how many motion picture theatres there are in the territory served by your branch? A. Approximately, about 670.

Q. And of that number, how many are served by the Minneapolis branch of the General Film Company? A. Two hundred and eighty-nine or two hundred and eighty-seven.

Q. Do you know whether, in that same territory, any part of these 660 theatres are served by other branches of the General Film Company? A. Yes, there are quite a few.

4 Q. Could you state approximately about how many? A. I am getting into Mr. Pearson's territory, down in Iowa.

Q. Well, state to the best of your knowledge how many, about. A. I cannot possibly state how many Mr. Pearson is handling in Iowa. As to Minnesota, of course, there is nobody handles but the Minneapolis branch. Wisconsin is handled by Milwaukee to a large extent, and I don't know how many they are supplying.

Q. Do you know how many theatres in that territory are supplied with the Mutual program? A. I should judge, about 107, or 108.

Mr. GROSVENOR: Now, are you excluding all of
Mr. Pearson's territory? 1

The Witness: That is in the territory working at my place. I do not believe the Mutual go to Iowa at all, because they have a branch at Des Moines.

By Mr. CALDWELL:

Q. How many are served with the Universal program?
A. I should judge, about 135, or 140.

Q. Do the special feature companies serve any theatres
in your territory exclusively, and provide them a complete
program? A. The Warner Features, I think, handle about
four or five, exclusively. 2

Q. And how about the Famous Players? A. No, they
handle them just for one, approximately, a week.

Q. Are there any other special feature companies that
supply a complete program in your territory? A. No, not
that I know of.

Q. None but the Warner? A. No.

Q. The principal cities in your territory are St. Paul
and Minneapolis, I presume? A. St. Paul, Minneapolis,
and Duluth. 3

Q. Take, for instance, Minneapolis; do you know how
many motion picture theatres there are there? A. Fifty-
four or fifty-five.

Q. And of that number, how many are being served by
your office? A. Twenty-three.

Q. And the others are all served either by the Universal,
the Mutual, or the special feature people? A. Yes, sir.

Q. How is it in St. Paul? A. I should judge there are
nineteen there.

Q. And how many are you serving? A. Seven. 4

Q. Seven out of nineteen? A. Make it eight. There is
eight of them.

Q. Duluth. How many theatres are there? A. Nine-
teen, I think.

Q. And how many do you serve in Duluth? A. Eleven.

Q. What other large cities are there in your territory,
or fair-sized cities? A. Well, I handle Des Moines, Iowa, a
population of 95,000.

1 Q. How many theatres are there? A. There are, as near as I can get a record of, there are twenty-three.

Q. And of that number, you serve how many? A. Eleven, I guess.

Q. What is the next largest city? A. Superior, Wisconsin.

Q. How large a city is that? A. I should judge, of a population of 25,000. Twenty to twenty-five thousand.

Q. And how many motion picture theatres are there? A. I would estimate twelve.

2 Q. And of that number, how many do you serve? A. Five.

Q. Next largest city? A. Virginia, up in the iron range.

Q. How large a place is that? A. Ten thousand.

Q. And how many motion picture theatres are there? A. Six.

Q. Of which you serve how many? A. One. I will correct that six to five.

Q. Name some other cities or towns in your territory of a population of 5,000 or over? A. Eau Claire, Wisconsin.

3 Q. Without my having to repeat the question each time, when you name the place, will you state how many motion picture theatres are there, and how many are served by your branch of the General Film Company? A. Eau Claire has seven. I supply two.

Mr. GROSVENOR: How large a city is Eau Claire?

The Witness: I should judge, about 8,000. I can confirm that.

By Mr. CALDWELL:

4 Q. You may proceed, and enumerate all the cities in your territory of 5,000 or over. How about Winona, Minnesota? A. Yes, I serve Winona. There are four houses there, and I have two.

Q. What size place is Marshalltown, Iowa? A. Marshalltown, I should judge, is about 4,000. It has one theatre. I presume that is a high estimate. I guess it is 3,000.

Q. It has only one theatre? A. Yes.

Q. With a population of 3,000? A. That is all I know is there.

Q. And who serves it? A. I do.

1

Mr. GROSVENOR: You have a hundred per cent., then, there?

The Witness: I would like to correct that. There are two there.

By Mr. CALDWELL:

Q. And who serves the other one? A. I am not prepared to say.

2

Q. Are there many towns in your district, or any towns in your district where one or more motion picture theatres are located, where you have no theatre? A. Yes, there are several of them. Biwabic, Minnesota, and Gilbert, Minnesota—

Mr. GROSVENOR: How large are these towns?

The Witness: Biwabic is about 1,500 or 2,000, and Gilbert, I should judge, is about two or three thousand.

By Mr. CALDWELL:

3

Q. Do you know how many theatres, motion picture theatres, seating five hundred or more, there are in the City of Minneapolis? A. I should judge, about twelve.

Q. And of that number of large theatres in Minneapolis how many are served by the General Film Company? A. I think I serve about eight.

Q. How is it in St. Paul? How many theatres are there seating five hundred or over? A. I should judge, about six.

Q. And of that six how many are you serving? A. Three.

Q. And Duluth? A. I should judge, six up there, the large ones.

4

Q. And of that six how many are you serving? A. Three.

Q. Superior? A. I know of one there.

Q. What is its size? A. That is part of a vaudeville house. It has about twelve hundred, I think. The picture houses will figure about two or three hundred seats.

Q. This is a vaudeville house that uses, by way of helping out the program, motion pictures? A. Yes.

Q. Now, does it happen with greater or less frequency that you are obtaining customers who are being supplied by

1 either the Mutual or Universal, or vice versa, that one or the other of those two companies is obtaining customers that are being served by the General Film Company? A. You mean, do they drift from one company to the other?

Q. Yes. A. Yes, sir.

Q. About how many changes of that character per week are there in your territory? A. Twelve to fifteen.

Q. What steps do you take to get new business in your territory and to take on additional customers? A. They are solicited. We have two solicitors and an expert repair man, whose business it is to go out and interview the exhibitors and talk the quality of our service, and we frequently get ac-
2 counts that way. If you happen to be in when they are dis- satisfied with somebody else's service, they are not hard to swing.

Q. How do your prices compare, on an average, with the Mutual and Universal? A. I think I am quite a lot higher— well, I would not say quite a lot higher, but my prices are higher than the other companies.' I make my prices higher because I am working under a larger overhead expense, making it possible to have the films in good condition at all
3 times, and the films are thoroughly renovated.

Q. About how much higher do you think your prices are? A. I will say I think ten per cent. higher.

Q. Do you have men out examining the projecting machines of your customers to keep them in condition? A. We have one.

Q. Do you know whether your competitors do that? A. They do not.

Q. About what is the average price you receive for your service in your territory? A. You mean an average on the films?

4 Q. Yes, the average of them altogether? A. I think forty dollars is a good average, thirty-five to forty dollars.

Q. How much? A. Well, thirty-five dollars to forty dollars.

Q. Now, to what extent are customers doing business with your branch permitted to select their own program? A. It has been customary with this office to permit the accounts or the exhibitors to offer suggestions, to ask them to make suggestions, and to send what we call a request list, and the bookers are instructed to follow that list as nearly as possible, in order to give the house such pro-

grams that they may feel ought to be run in that particular district. 1

Q. Are those requests usually complied with? A. Quite frequently.

Q. And if they are, in some instances, not complied with, what are the reasons for it? A. The film is either booked to another point at that time before the request comes in, or the program is not balanced, so we use our own judgment to fill in the program in order to give a better program.

2

Thereupon EDWARD AUGER, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Auger? A. St. Louis, Missouri.

Q. In what business are you engaged? A. Manager of the General Film Company's branch office at that point.

Q. How long have you occupied that position? A. Since 3
December, 1912.

Q. What is the territory served from that office? A. The eastern part of Missouri, part of Illinois, Iowa, Arkansas, and Kentucky.

Q. What part of Illinois do you serve? A. The western and southern part of Illinois.

Q. Do you have all of Kentucky? A. No, just the northern points.

Q. You do not serve Kansas City, do you? A. No, sir. We have a branch at that point.

Q. You stated that you served eastern Missouri; from 4
what points? A. Well, pardon me; from a point east of Jefferson City, or thereabouts, I don't remember exactly where the line of demarcation is there.

Q. Jefferson City is about the middle of the State? A. Yes, about the middle of the State.

Q. Now, who are your competitors in that territory? A. We have in St. Louis the Universal film and the Mutual film, and the Swanson-Crawford and a large number of feature exchanges.

1 Q. Who serves the Mutual program in St. Louis? A. The Mutual Film Corporation.

Q. I mean the Universal? A. The Universal Film Supply Company, I believe, is their name.

Q. What program do the Swanson-Crawford Company serve? A. Up to a few months ago they were serving the Mutual program, but since then litigation has arisen and they have been cut out of their supply, and the Mutual Film Corporation established an office at that point, and since then they have been handling their old film and buying a few films on the outside, like Gaumont and Ambrosio, and a few others.

2 Q. There are a great many outside films, in addition to the special feature films, are there not, that are not supplied either by the Universal or Mutual program? A. Quite a number, yes, sir.

Q. Sufficient to make up a program of them all united? A. Well, I don't know whether there would be sufficient to supply just the requirements called for nowadays, because each picture show uses such a quantity of film today that possibly they may not all be in position to supply it in its entirety, but they could take care of a pretty good pro rata.

3 Q. Do you happen to know whether there are any new producers or manufacturers of motion pictures or new importers that are entering the field from time to time? A. I cannot give you the names, although I know such a thing exists.

Q. Now, what special feature companies are doing business in your territory? A. Among them, and one of the largest, is the Warner's Feature Company, and then the Famous Players films are handled by the New Grand Theatre Company, who, by the way, are also an exhibitor in St. Louis, and the Union Feature Company, and the International Feature Company, the American Feature Company, and quite a number of others which I do not recall just at this time.

4 Q. Do they all have offices in St. Louis? A. Yes, sir.

Q. And engaged in active business there? A. Yes, sir.

Q. Actively competing? A. Yes, sir.

Q. With your company? A. Yes, sir; we consider it so. They have solicitors on the road, and so forth.

Q. Do you know how many motion picture theatres

there are in the territory served by your branch of the General Film Company? A. As nearly as we can make it out, there are five hundred and eighty picture shows and vaudeville houses running features in and around our territory.

Q. Now, how many theatres are supplied by your branch of the General Film Company in that territory? A. At the last report, two hundred and eighty-seven.

Q. Do you know to what extent the theatres in the territory you have just described are served by the other branches of the General Film Company? A. Approximately ten or twelve; I cannot say exactly.

Q. Do you know how many theatres in that territory are served with the Universal program? A. Out of St. Louis, as near as I can make it out, there is one hundred and thirty-eight houses.

Q. That is, by the Universal? A. Yes, and out of St. Louis.

Q. Do you know how many are being served by the Universal program in St. Louis? A. Approximately ninety-five.

Q. Now, how about the Mutual, how many do they serve? A. Approximately ninety-five, that is just what I answered.

Q. I said the Mutual? A. I thought you said the Universal. Pardon me, by the Universal, it is one hundred and thirty-eight, and the Mutual is ninety-five.

Q. Does that relate to St. Louis alone, or the territory which you have just described? A. The territory which I have just described.

Q. Well, in that number, do you include the theatres served by the Swanson-Crawford Company? A. No, sir, there are about thirty-five accounts taken care of by the Swanson-Crawford Company.

Q. How many are being supplied by the Warner features? A. As near as I can make it, sixteen, that really supply a complete program in that territory. That is, about three or four changes per week—you see, it is generally all features.

Q. The ones that are taking the Warner features, they are not taking service from one or the other companies at the same time? A. Generally, no.

1 Q. Are there any other feature companies that are supplying complete programs in your territory? A. Well, they can do it, but they can't sustain it—they can do so on account of the accumulation of features, possibly for a week, or two, or three, and then their exhibitors then quit them and go with the other regular exchanges.

Q. About how much business a week are the Warner feature people doing there? A. Approximately three hundred and seventy-five dollars.

2 Q. And the other feature companies, in the aggregate, I mean? A. In the neighborhood of one hundred and eighty dollars per week.

Q. And the Swanson-Crawford Company, do you know what they are doing in volume? A. They will run between five hundred and six hundred dollars, I can't say just what. Those figures, of course, are approximate.

Q. What large cities are there in your territory, outside of St. Louis? A. Amongst them, there is East St. Louis, which, I believe, is about the largest immediately surrounding us.

3 Q. Name any of the other large ones. A. Springfield, Illinois; Jefferson City, Missouri; Alton, Illinois and Cairo, Illinois. Those are all the towns above ten thousand.

Q. How many theatres are there in St. Louis, seating from five hundred up, motion picture theatres? A. There are about fifteen.

Q. And of that number, how many are served by your branch? A. I should judge, nine of them.

Q. What is the population of East St. Louis? A. I believe it is close to 200,000, but I don't know, I never saw the figures on it.

4 Q. How many motion picture theatres, from 500 seating capacity and upward, are to be found in East St. Louis? A. There are five, I believe.

Q. And of that number, how many do you serve? A. We supply two.

Q. What is the population of Springfield, Illinois? Is that Springfield, Illinois, or Springfield, Missouri? A. Springfield, Illinois. It has approximately 75,000.

Q. How many theatres of that character? A. Including vaudeville houses?

Q. No, motion picture houses. A. Nine.

Q. And of that number, how many do you serve? A. Five. 1

Q. Jefferson City, how large a place is that? A. About 12,000.

Q. How many theatres, seating 500 and over? A. Three picture shows, and we supply two.

Q. Alton, Illinois? A. Approximately the same, ten or twelve thousand. There are three houses, and we supply three.

Q. Cairo, Illinois? A. Five houses. We supply two.

Q. Do you find any towns in your territory where there are one or more motion picture theatres, and where the General Film Company does not serve either of them? A. There is one that I can recollect, and that is Kirksville, Missouri. There are two very good houses there, one using Universal and the other the Mutual. We have tried every means to secure the business, but have failed so far. The main objection seems to be that we have not got enough sensational films to suit their requirements, or rather, the demands from their public. I cannot think of any others just at this present moment, but I am sure others exist. 2

Q. Are there many towns in your territory where there are just three motion picture houses? A. Very few. The only instance is—Alton, I believe, is about the only one I can recall. 3

Q. Well, what is the average price of service that you get from your exhibitors or customers throughout your territory? A. Around twenty-nine dollars and fifty cents.

Q. And how does that compare with the price charged by the Mutual and Universal? A. Very favorably in our favor, of course.

Q. What percentage? A. I should judge, about twenty per cent. higher, we are. 4

Q. Now, to what extent are your customers at liberty to select their own programs, in your territory? A. We very much prefer to let them do that as much as we possibly can, but we find at least fifty or sixty per cent. of our customers prefer to let us pick their shows, thinking that our bookers are acquainted with the conditions of the films, reels, and subjects, and can make a better and more judicious selection than they can themselves, and, naturally, we do not discourage them. Others, as a rule, particularly the

1 high priced exhibitors, prefer to make their own selection of subjects, which is entirely satisfactory to us.

Q. If an exhibitor is dissatisfied with a program you have offered him, do you change it for him? A. Yes, sir, we are very much pleased to do so.

Q. In your territory, do you have inspectors out on the road, examining and inspecting the projecting machines? A. We have no special appointment to that effect, but we have two traveling men who solicit business for us, handle all pictures and sales of machines and supplies, and at the same time are always on the lookout for suggestions to the various exhibitors that will improve their projecting, or other parts of the business. We find it is valuable, not only to the exhibitor, but it helps our end of it considerably.

Q. In what way does it help your end of it? A. By closer attention by the various exhibitors, the returning of the film in better condition, and it helps the sale of machine parts, and other things, whenever it is required.

Q. Now, just how active is competition in your territory, between the General Film Company and the Universal and Mutual? A. It is so active that we have to keep these two solicitors on the road all the time, and, furthermore, there is not a week that goes by when we have not got from eighteen to twenty accounts which quit us. Of course, we have practically that many coming to us.

Q. Then, it is about an even stand-off between you? A. Yes, sir; pretty close to it.

Thereupon, SAMUEL H. SHIRLEY, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Shirley, where do you live, and in what business are you engaged? A. Wilkes-Barre, Pa., and I am branch manager of the General Film Company.

Q. How long have you occupied that position? A. Since November first, 1910.

Q. Was that about the time that the General Film Company acquired that exchange? A. At that time, yes, sir.

Q. Were you connected with it prior to that time? 1

A. I was manager of the Pittsburgh Calcium Light & Film Company's branch at that point.

Q. Did you have anything to do with the sale of that exchange to the General Film Company? A. Absolutely nothing.

Q. All that you know about it is that it was bought by the General Film Company? A. Yes, sir.

Q. Now, what is the territory served from your branch of the General Film Company? A. We serve in about thirteen counties in northeastern Pennsylvania, and a few towns along the southern part of New York State, and one or two points in the eastern part of New Jersey, and one point in the northern part of Maryland. 2

Q. Then, you overlap to a certain extent, the territory served by the Philadelphia office of the General Film Company, and the territory from what branch in New York? A. Buffalo, principally.

Q. Do you happen to know how many theatres you serve in that territory, that is, served in the Philadelphia office? A. Well, in the territory I have mentioned, that is, in the thirteen counties of Pennsylvania, there is about, as near as I can make out, eleven or twelve accounts that Philadelphia is serving. 3

Q. You are not serving more than eleven or twelve theatres in the territory that is served by the Philadelphia office, is that correct? A. As near as I can make it, yes, sir.

Q. Now, who are your competitors in that territory? A. The Exhibitors' Film Company.

Q. What program does it distribute? A. The Universal. And the Mutual Film Corporation, serving the Mutual program, and the different feature companies which we do not have in Wilkes-Barre—they do not have offices in Wilkes-Barre—the feature companies come from Philadelphia and New York. 4

Q. Then, you have two exchanges competing with you with offices located at Wilkes-Barre, Pa.? A. Yes, sir.

Q. How many motion picture theatres are there in the territory which you have just described as tributary to the Wilkes-Barre office? A. As near as we are able to determine, about two hundred and thirty-five.

Q. Of that number, how many are served by your

- 1 branch of the General Film Company? A. One hundred and thirty-three all told.

Q. By the Philadelphia office of the General Film Company? A. About eleven.

Q. And does that number, two hundred and thirty-five, include theatres that take their service from other branches of the General Film Company in addition to the Wilkes-Barre branch and the Philadelphia branch? A. No, there is no other branch of the General Film Company in that territory, except the Philadelphia branch and mine, at Wilkes-Barre.

- 2 Q. How many theatres are served by the Universal Company in that territory? A. Approximately sixty.

Q. And by the Mutual? A. Thirty.

Q. What is the extent of the competition you meet in that territory, from the special feature companies? A. They book into practically all the houses that are using both the Universal, the Mutual, my own service, and in quite a number of instances different theatres will book features entirely, making it up from the different feature programs, and make them their entire week's service.

- 3 Q. Is an exhibitor of that character lost entirely by your company? A. They have absolutely no dealings with me at all.

Q. Are any of these feature companies supplying a theatre in your territory with a complete program, which they use continuously? A. Yes, sir.

Q. To the exclusion of the programs of either of the other three companies you have named? A. Yes, sir.

Q. What size houses do these feature people put their features in, small or large ones? A. All classes, wherever they can get them.

- 4 Q. Do you find that the Famous Players Film Company are active in your territory? A. Yes, at several points.

Q. What classes of houses do they go in? A. The better class of houses.

Q. And the Warner Feature Company? A. They get the poor class of houses, as a rule.

Q. Do you know what percentage of the business in volume, I mean in money, is done in your territory by the special feature program? A. No, I have no idea.

Q. How do the prices charged by the Famous Players

Film Company compare with those charged by the General Film Company? A. The Famous Players is a great deal more than anything the General Film Company charges. 1

Q. Well, take the principal theatre in Wilkes-Barre they are serving; do you know what they charge for their service? A. Thirty-seven dollars and fifty cents per day.

Q. That is about as much as you get for a week, is it not? A. Pretty nearly as much as we average per exhibitor per week.

Q. How do the prices charged in your territory by the General Film Company compare with those charged by the Mutual and Universal? A. Ours are from fifteen to twenty per cent. higher. 2

Q. When the General Film Company took over the Wilkes-Barre branch of the Pittsburgh Calcium Light & Film Company, did they raise the price of service to the exhibitor? A. No, sir.

Q. What is the average price charged? A. At the present time?

Q. Yes. A. A little over thirty-nine dollars; between thirty-nine and forty dollars. 3

Q. What was it during the years 1909 and 1910, prior to the sale to the General Film Company? A. Between forty and forty-one dollars.

Q. Are you giving the exhibitor any more for his money now than he got at that time? A. Might near twice as much.

Q. Explain how that is that you give almost twice as much. A. At that time they used two or three reels to a program, and now they use from four to six.

Q. Is there any improvement in the quality of the pictures served now? A. Very much.

Q. In what respects? A. The quality of the photography and the class of the subjects has greatly improved. 4

Q. How many theatres are there in Wilkes-Barre seating 500 or more? A. Four.

Q. How many of those do you serve? A. I serve two.

Q. And Scranton? Now, without my having to repeat the question as to each city, give us the facts. A. Scranton has but one moving picture theatre of more than 500 seats, and I serve that.

Q. What is the next largest city in your territory? A.

- 1 Easton has four. I serve two. Allentown has one, and I serve that one. Dunsmore has two. I don't serve either one of them. Shamokin has three, and I serve one of them.

Mr. GROSVENOR: Are you naming all of the theatres in each of these towns?

The Witness: I understood of five hundred seats or more.

- 2 Mr. CALDWELL: That was the question.

The Witness: Harrisburg has five or six. It has six. I serve two; that is, of those that seat 500 or more, I serve two. That is about all the towns that I can think of.

By Mr. CALDWELL:

Q. What about Bethlehem? A. Bethlehem has one house seating 500, and I serve that.

- 3 Q. Did you state you served some cities in southern New York? A. Yes. Binghamton has four seating 500 or more, and I serve two. Port Jervis, New York, has one, and I serve that one. Those are all I can recall at the present time.

Q. Are there any large towns in New Jersey that you serve? A. No; only small towns that I serve there.

- 4 Q. Do you know of any towns in your territory that have one or more motion picture theatres where you have no exhibitor? A. Yes, sir, we have three such towns. We have Dunsmore, 18,000, two theatres, both independent. I have Old Fort, a town of 11,000, four theatres, all independent. We have Edwardsville, a town of 8,000, two independent theatres.

Q. To what extent is the exhibitor at liberty to select his own program at your branch? A. We purchase six reels a day at our branch, and we endeavor to sell films of one age in the same town; that is, we try to sell our entire output in a town between two or more exhibitors, and when we serve our entire output in one town, we give them what we call an "alternating program." To start with, we lock all of our reels; that is, we serve a man

three ten-day reels and he gets three ten-day reels the entire year around every day in the year; and his opponent, we try to sell him the same service, and give him the opposite three. For instance, on Monday we give him Edison, Biograph and Kalem, and we give his competitor the other three reels, and the following Monday we reverse the order and give the competitor the Biograph, Edison and Kalem and give him the same makes the other man had, and, therefore, give him an equitable distribution of the different manufacturers.

1

Q. In that way do you avoid any conflict of service?

2

A. Yes, sir.

Q. And any repeaters? A. Yes, sir.

Q. Do you find that that alternating system is satisfactory to your customers? A. Entirely.

Q. If you have a customer dissatisfied with the pictures which you have included in his program, do you change them for him? A. Yes, we are very glad to, but it has to be with the understanding he has to know it is something else that has not been shown by his competitor, in order not to give him something that has been repeated.

Q. He must give you reasonable notice in advance? A. Yes, sir.

3

Q. Just how active is the competition between you and the other companies you have named, in your territory?

A. There are from five to six customers changing every week, back and forth, and we get in close touch with them.

Q. You mean by that, they are getting five or six of your customers every week and that you are getting five or six of theirs? A. Yes.

Q. And it is about an even swap? A. Yes, sir.

Q. You have solicitors on the road? A. One.

Q. What are his duties? A. To solicit orders for films, sell supplies and machines and to inspect machines; that is, he goes in and sees that they are properly adjusted, and if they are not, he calls the attention of the manager of the house to it, and sees that the machine is all in shape.

4

Q. Do you know whether a license was granted by the Motion Picture Patents Company to Mr. Cahuff, to operate an exchange in Harrisburg, Pa. A. Yes, sir.

Q. Do you happen to know whether that license was afterwards cancelled? A. I believe it was.

1 Q. What was the name of the exchange? A. World Film Company.

Q. Did they go into business? A. No, sir.

Q. Was that the reason why the license was cancelled?
A. Yes, sir.

Q. He didn't operate under it at all? A. No, sir.

Mr. GROSVENOR: I object to the witness stating what the reason was, as he has not shown any connection with the Patents Company.

2 By Mr. CALDWELL:

Q. Do you know the reason why it was not? A. Yes, sir.

Q. Now, will you state the reason?

Mr. GROSVENOR: How do you know the reason?

By Mr. CALDWELL:

3 Q. Yes, how do you know? A. Mr. Calehuff was to make application for the license and if it were granted, he and I were to be partners in the exchange, and a paper was drawn up to that effect before Mr. Calehuff made the application, and Mr. Calehuff was to put up the money, and I was to do the work, and I found out, upon investigation, he was unable to produce the money in sufficient quantity to go ahead, and the matter was dropped as far as I was concerned, and Mr. Calehuff then did not take it up, and they cancelled his license.

Q. Do you know, of your own knowledge, that the license was never operated under? A. Yes, sir.

4

Thereupon, HERBERT C. WALES, the next witness produced by the defendants, of lawful age, first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Wales? A. Albany, New York.

Q. In what business are you engaged? A. Branch manager of the General Film Company up that way.

Q. How long have you occupied that position? A. Since 1
June 1st, 1913.

Q. Prior to that time, what business were you engaged in?
A. For a few months immediately preceding that, I was
branch manager for the same company, in Canada. Prior
to that, assistant manager of the Universal Film Exchange,
in Boston.

Q. That was during the year 1912? A. Yes, sir; the last
four months in 1912.

Q. Do you know how many customers the Universal had
at that branch in Boston when you were with them? A. 2
Why, to the best of my recollection, approximately two hun-
dred.

Q. How many reels a week were they running? A. I
think, thirty to thirty-five.

Q. Do you happen to know whether the standing order
system was in force in 1912, when you occupied that posi-
tion in the Universal exchange? A. At that time, it was.

Q. Did they also have regular release dates? A. Yes, sir.

Q. While you were with them, did they make any effort
to keep their customers apart, so as to avoid conflict of
service and repeaters? 3

Mr. GROSVENOR: Objected to as immaterial.

Mr. CALDWELL: It is all bearing on the general
business conditions. We have had a great deal of
that, as to our service, but none whatever as to the
service of our competitors. You may answer.

The Witness: Why, we worked on practically the same
lines we do at the present time with the General Film
Company.

By Mr. CALDWELL: 4

Q. Now, what is the territory served from the Albany
office of the General Film Company? A. New York State,
as far as the Canadian border, well, to the St. Lawrence
River, as far west as Syracuse, practically to the Penn-
sylvania line, and East, including part of Massachusetts and
a part of Vermont.

Q. Do you serve any customers in Syracuse? A. Yes,
sir.

1 Q. About how many? A. About sixteen in Syracuse.

Q. Is Syracuse also served from the Albany office of the General Film Company? A. This is the Albany office that I am speaking of.

Q. Is that the only point where you overlap the Buffalo office? A. There are one or two other smaller towns in which both Albany and Buffalo have customers, at not over two or three points.

Q. How far do you go into Vermont? A. Just to what you might say the western border.

2 Q. How far into Massachusetts? A. The western part of that State.

Q. Is any part of Massachusetts served by you, served from any other branch of the General Film Company? A. The Boston office goes into western Massachusetts to some extent.

Q. How far south in New York do you go? A. Practically to the Pennsylvania border.

Q. How far down the Hudson? A. About Poughkeepsie.

Q. Now, what competition have you? A. We have the Rex Film Exchange in Albany, the Universal and Mutual from New York.

3 Q. Is that the nearest branch of the Mutual? A. They have a branch in Springfield, Massachusetts. I presume it would be about the same distance from Springfield, Massachusetts.

Q. And what other branches of either the Universal or the Mutual are you competing with, then? A. The Mutual have a sub-branch, I believe, in Syracuse. That is not a buying office, but a sub-branch.

4 Q. Do you have any competition from the Greater New York Film Rental Company in your territory? A. Yes, sir, we have, in Syracuse.

Q. Do you know how many motion picture theatres there are in the territory served from the Albany office? A. Why, from three hundred and seventy to four hundred and twenty; somewhere between those two figures.

Q. Of that number, how many are served from the Albany office of the General Film Company? A. Varying from one hundred and sixty-five to one hundred and ninety or one hundred and ninety-five.

Q. Do you know how many are served by the Mutual in that territory? A. Why, out of the three hundred and

seventy to four hundred and thirty, I think they are supplying sixty or seventy. 1

Q. How many are served by the Universal? A. One hundred and twenty—well, 116 to 130.

Q. Do you know how many of those 375 to 430 theatres in that territory are served by other branches of the General Film Company than the Albany branch? A. Out of that number, not over ten or twelve.

Q. Do you know how many are served by the Greater New York Film Rental Company in that territory? A. About fifteen or sixteen.

Q. What is the competition with the special feature film companies in your territory, if any? A. Why, they compete in this way, that they take a certain proportion of your business. I do not consider that the feature exchanges can handle a complete program in New York State. 2

Q. Have they been doing it up in your territory? A. Not a complete program.

Q. Have any of them an Albany branch or office? A. No, sir.

Q. The Albany territory is supplied by New York exchanges? A. Yes, sir. I believe there are one or two feature exchanges in Syracuse. 3

Q. How long has the Greater New York Film Rental Company been competing with you up there? A. Since early last Spring.

Q. Have they been cutting prices? A. Yes, sir.

Q. Have you been meeting their cuts? A. Why, I have not attempted to. I consider their prices are below the value of the service.

MR. GROSVENOR: Whose prices, those of the Greater New York Film Rental Company? 4

The Witness: Yes, sir, the Greater New York.

By MR. CALDWELL:

Q. Now, will you state just how the competition is in your territory between your branch and the branches of the Universal and Mutual? A. How is that? I don't just get the meaning of your question.

1 Q. Well, what do you do to get the business? A. We are all after the business. All the exchanges are after the business.

Q. What do you do to get the business? A. Have solicitors on the road, and circularize all the different houses, and use all the legitimate means that are known, I guess.

Q. Are the other companies getting your customers often? A. Every week we lose some.

2 Q. And are you getting theirs? A. Yes, sir; from time to time.

Q. How many theatres are there in Albany seating five hundred and upward? A. I think there are only three seating over 500.

Q. And of those, how many are you serving? A. We are serving two.

Q. Do you serve in Troy? A. Yes, sir.

Q. What is the condition there, in that respect? A. Well, about the same as Albany; that is, there are about three houses seating over five hundred in Troy, of which we have two.

3 Q. Do you serve Schenectady? A. Yes, sir.

Q. How large a city is Schenectady? A. About 85,000.

Q. About the size of Albany? A. Albany is about 110,000.

Q. Well, what is the condition in Schenectady? A. You mean in regard to the large theatres?

Q. Yes. A. I believe there are only two houses in Schenectady that are running straight pictures that are over that capacity.

Q. And who serves them? A. We have one and the Mutual Company has the other.

4 Q. What other large cities do you serve outside of those I have just named? A. Amsterdam, which, I believe, is a place of from twelve to fifteen thousand.

Q. What is the condition there? A. Seven theatres there, of which we have three.

Q. Do you serve Utica, or is that served from the Buffalo branch? A. We serve Utica, although the Buffalo branch has one house in Utica.

Q. That is a pretty large sized town? A. Well, about sixty to seventy or eighty thousand.

Q. How many large theatres of that character in Utica?

A. I believe there are four theatres, possibly, of over 500 seating capacity. 1

Q. And who serves them? A. We have two, the Buffalo branch has one, and we have one.

Q. Who has the other two? A. I think the Mutual and Universal have one each.

Q. What are some of the other larger towns in your territory? A. Rome has two.

Q. And who serves them? A. We have one.

Q. Who has the other? A. The other is displaying special features. I suppose, I should correct my previous statement that I didn't know of any house confining itself to special features, but that is the only house in the territory. I didn't think of it. 2

Q. What other large towns are there? A. Hudson is a town of 12,000, and has one large house, which we are supplying. Poughkeepsie has two houses seating over five hundred. We are supplying one and, I think, the Mutual has the other.

Q. Do you go as far east as Springfield, Massachusetts? A. No, we do not.

Q. Are there any large theatres down in western Massachusetts? A. Yes, sir; Pittsfield. 3

Q. What are the conditions there? A. Pittsfield has, I believe, two theatres seating over five hundred. We are supplying both of those.

Q. What cities in western Vermont do you supply? A. Burlington is practically the only city of any size. It has one house which seats over 500, which we are supplying.

Q. Did you mention Watertown? A. No. Watertown is a city of probably 30,000, and does not have any house seating over 500. 4

Q. Now, to what extent is a customer at liberty to select his own program at your branch? A. Why, out-of-town customers, that is, those who are shipped to by express, or whose films are sent by a carrier, in a way, they usually leave it to our judgment, that is, to the judgment of our booker to pick out their program.

Q. Do they prefer that? A. Yes, they do.

Q. Is that a practice that you insist on their following? A. We don't insist on it at all; they just prefer to

- 1 leave it to us. At the same time, we always welcome every suggestion or request. They send us lists from time to time of subjects which they prefer or want and which are always supplied.

Thereupon, CHESTER W. SAWIN, the next witness produced by the defendants, of lawful age, being duly sworn by the Examiner, deposed as follows:

- 2 Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Sawin? A. Washington, D. C.

Q. In what business are you engaged? A. Branch manager of the General Film Company's office at that point.

Q. How long have you occupied that position? A. Since September of this year.

Q. Were you ever in the motion picture business before that? A. Yes, sir.

Q. Where? A. Previously, in Atlanta.

- 3 Q. And when was that, and in what capacity was that?
A. Assistant manager of the General Film Company's office at that point.

Q. And prior to that? A. Birmingham.

Q. When were you in Birmingham? A. Since the latter part of 1907, or the early part of 1908.

Q. In what branch of the business were you engaged there? A. I was with the Bailey Film Service.

Q. When was that, what year? A. As I stated, the latter part of 1907, or the early part of 1908. When I went with them.

- 4 Q. Did the Bailey Film Service afterwards change its name? A. Yes, sir.

Q. And to what? A. Southern Film Exchange.

Q. What became of the Southern Film Exchange? A. They consolidated with the Theatre Film Supply Company under the name of the Theatre Film Supply Company.

Q. And they operated in Birmingham as its headquarters? A. Yes, sir.

Q. And supplied what territory? A. Alabama, Missis-

issippi, part of Louisiana, Georgia, Florida, and parts of North and South Carolina, and a part of Virginia and Tennessee. 1

Q. And what other film exchange, if any, was there in Birmingham at that time? A. There was the Birmingham Film Exchange.

Q. Were both of those licensed exchanges? A. Yes, sir.

Q. And what were the business conditions in that territory at that time? A. About as deplorable as could be imagined.

Q. Will you state what the conditions were? A. Each exchange was trying to get business, of course, and prices were so reduced that neither of the exchanges, at that point, were making a dollar. 2

Q. What happened, then, to those two exchanges? A. They were merged into what was known as the Southern Amusement Company.

Q. Well, did the Southern Amusement Company have the stock control of those two companies? A. The stock, as I understood it, was pooled.

Q. Did both companies continue in business? A. They did. 3

Q. As ostensible competitors? A. None of the trade knew there was any consolidation whatever, and they worked as competitors.

Mr. GROSVENOR: When was this?

The Witness: I believe it was in 1909.

By Mr. CALDWELL:

Q. And they were merged into what was known as the Southern Amusement Company? A. Yes, sir. 4

Q. You were connected with the Theatre Film Supply Company? A. Yes, sir.

Q. At the time? A. Yes, sir.

Q. And you knew it? A. Yes, sir.

Q. Did you have any connection with the Southern Amusement Company? A. None whatsoever.

Q. Well, prior to that consolidation, were either of those exchanges making any money? A. None whatsoever.

1 Q. What happened after they were consolidated? A. The price of film went up.

Q. Then did you have any actual competition in that territory? A. After that, there was sharp competition, so far as the exhibitor was concerned, but none whatsoever between ourselves.

Q. And how long did that condition of affairs continue? A. Until the Theatre Film Supply Company was taken over by the General Film Company.

2 Q. Will you state the character of the competition that existed between those two companies prior to the time they were merged into the Southern Amusement Company? A. It was simply as in the film business, the value of the film to a house is determined by its exclusiveness, and the theatre who uses it first is the one who derives the advantage from that film. If the Theatre Film Supply Company, with whom I was connected, if they found a customer of the Birmingham Film Exchange advertising anything of special nature for use on Wednesday, we would rush it to our customer for Tuesday, and in that way, if we could beat them in to a single point often enough, we would be able to take over what
3 business they had there. It was simply this, that the exhibitor, at that time, had no advantage of previous advertising.

Q. And did it result in the conflict of programs and repeaters? A. In many places. In Atlanta, the Birmingham Film Exchange would daily supply the same program to one theatre that we were supplying to another, and the films were sent from Atlanta to Athens, Georgia, and were shown at two theatres in Athens on the same day, and then to Macon, Georgia, and were shown in two theatres in Macon on the same day, and thereby making the profits of
4 either one of those theatres very small, and it is impossible for two theatres running the same show in a small place to make a success of it.

Q. What territory, Mr. Sawin, is served at the present time from the Washington branch of the General Film Company? A. The eastern part of Virginia—no, the part of Virginia wherein Lynchburg, Danville and Roanoke are located, and in West Virginia at one point, the western shore of Maryland, and Maryland, a part of Maryland and the District of Columbia.

Q. You serve Baltimore? A. Yes; that is part of Maryland. 1

Q. Any part of West Virginia? A. I think we have one, or possibly two, exhibitors in West Virginia.

Q. To what extent do you go into Virginia? A. As I say, I believe we have one or two customers in West Virginia.

Q. I am speaking of Virginia. A. Oh, in Virginia, as I say, we handle the trade in the locations of Danville, Lynchburg, and such points as that.

Q. What competition have you in that territory? A. The Washington Film Exchange handles the Universal program, with offices in Washington and Baltimore. The Mutual Film Corporation have offices in both Washington and Baltimore. The Warner Features Film Company, with offices in Baltimore, and the Famous Players Company, with offices in Baltimore, and two or three other feature film companies, the names of which I do not know. 2

Q. Does the Greater New York Film Rental Company compete with you in that territory? A. Yes, sir, the Greater New York Film Rental Company, with offices in Baltimore and New York. 3

Q. Do you know the total number of theatres in the territory served by the Washington branch of the General Film Company? A. Inasmuch as I have been in that territory only since September first, I have not an accurate list. I can give you the total number of theatres in all cities we have exhibitors in.

Q. What is the number? A. Two hundred and seventy-five.

Q. And of that number, how many are served by the General Film Company? A. One hundred and forty-two.

Q. Do you know to what extent the cities you have mentioned as being included in the two hundred and seventy-five are served by other branches of the General Film Company? A. Outside of the number I have mentioned, six theatres served by the different branches located in Richmond and Norfolk. 4

Q. You have not included those in the number of 275? A. No, sir.

Q. Do you know how many are served in this territory by the Greater New York? A. Five.

Q. Is that number included in the 275? A. Yes, sir.

1 Q. How many are served by the Universal? A. Fifty-two.

Q. And how many by the Mutual? A. Fifty-three.

Q. And by the special feature companies? A. Twenty-two.

Q. Do any of the special feature concerns serve a complete program? A. No, sir.

2 Q. In mentioning the twenty-two served by the special features, what did you mean by that? A. I mean the main part of their program is made up of features, but they use independent in connection with it, used as fill-ins. I did not mean those independent films that I stated in the number of theatres supplied by other independent exchanges.

Q. You included them in the number you gave, as you did your own? A. No, sir; I don't think we have a single theatre that is using a feature with ours.

Q. What per cent. of business in value in that territory is done by the special feature companies, if you know? A. I don't know the rates charged, outside of Washington and Baltimore.

3 Q. What rates do they charge there? A. They charge from twenty-five to fifty dollars per day, according to the class of the feature; that is, the Famous Players, and the Warner Features charge from ten to twenty-five dollars.

Q. Take Washington; in how many theatres, or how many theatres buy that special feature service? A. Not any one, exclusively.

Q. Who has put them in? A. The Garden Theatre, on Ninth Street. They use Warners and the Famous Players, together with independent one-reel subjects each day, but they don't change their pictures daily.

4

By MR. CALDWELL:

Q. Just how active is that competition between the General Film Company and these other companies you have named? A. Each of the film companies have their solicitors on the road at all times, yes, sir.

Q. You have one or more? A. One, yes.

Q. Are you losing customers to one or the other of your competitors? A. I suppose there are on an average of two or three changes a week in our customers.

Q. And by that you mean you lose two or three a week? 1

A. Yes, sir.

Q. And you are getting about the same number back?

A. Yes, sir.

Q. Has your number of customers served by your branch varied very much in number? A. I can only give you that since September first.

Q. Has the total number of customers diminished or increased since then? A. We are serving nine more now than we were serving September first.

Q. Now, take the City of Washington, where you live; how many motion picture theatres are there in Washington that seat 500 or more? A. I believe there are six. 2

Q. And of those six, how many are you serving? A. I think we supply three.

Q. The other three being supplied by whom? A. By features and the independents.

Q. What is the situation in Baltimore, and if you will, answer that question by giving the number of theatres seating 500 or more? A. I could not tell you how many there are in Baltimore, but I should judge about six, of which we supply three. 3

Q. What is the next largest city in your territory? A. It is pretty hard for me to give you these things, inasmuch as my knowledge is limited, owing to the short time I have been there, and I don't know the number of theatres in other cities.

Q. Do you serve Richmond, Virginia? A. We serve part of the service. The Philadelphia office takes care of the clear-reel service in Richmond.

Q. And what do you mean by that? A. The first-run film, film that has not formerly been shown there.

Q. So that a large theatre served with the licensed service in Richmond would be more apt to be served by the Philadelphia branch than the Washington office? A. On the first-run film, but we have a large theatre in Richmond on the repeat service, the Little Theatre there. 4

Q. Do you know how many theatres in Richmond have a seating capacity of 500 or more? A. I do not.

Q. Do you serve Norfolk? A. We have one account there, taking the repeat reel service.

Q. Do you know anything about the number of large theatres there? A. I do not.

1 Q. What other large towns do you serve? A. Lynchburg and Danville, but, as previously stated, I cannot give you the number of theatres there, owing to my short connection with this particular office.

Q. Now, to what extent is the customer allowed to select his own program at your branch of the General Film Company? A. When we arrange the service originally, he knows exactly the reels he will receive, and if they are not satisfactory, they will not take them. We book on a stated schedule.

2 Q. You make up the program for him? A. He is booked every week for certain reels every Monday of a certain make and age, and when we sell him that service, he knows he will get that each week.

Q. And by a certain service, or certain makes, do you mean certain makes of pictures? A. Yes, sir. We may schedule him for Monday a Kalem two days old, and on Wednesday, Monday's Vitagraph, twelve days old, and on Saturday we may schedule Monday's Edison, eighteen days old, and that may be his Saturday program. That particular Monday the Kalem release has been announced, and he knows what it is, or the particular Edison Saturday release has been announced, and he knows what it is.

3 Q. And if he is not satisfied with that picture, can he change it? A. In ninety-nine cases out of a hundred we are able to change it for him.

Whereupon, at 5:50 o'clock P. M., on this Monday, the 8th day of December, 1913, the hearings were adjourned until Tuesday, December 9th, 1913, at 10:30 o'clock A. M., at the Hotel Manhattan, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889.	2
<i>v.</i>		
MOTION PICTURE PATENTS Co. and others, Defendants.	Sept. Sess., 1912.	

NEW YORK CITY, December 9, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 9, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

- 1 The following original exhibits were returned to Mr. Charles F. Kingsley:

Defendants' Exhibit No. 127, being Agreement dated 19th February, 1904, between Armat Moving Picture Company, and American Mutoscope & Biograph Company.

- 2 Defendants' Exhibit No. 128, being License signed "Armat Moving Picture Co.," addressed to "Mr. H. N. Marvin, Trustee," and endorsed across face, "Cancelled Oct. 17th, 1904, Armat Moving Picture Co., by Thos. Armat, Pres., H. N. Marvin, Trustee."

Defendants' Exhibit No. 129, Agreement between Armat Moving Picture Co., and American Mutoscope & Biograph Company, dated 17th October, 1904.

Defendants' Exhibit No. 130, being Memorandum of Agreement dated 21st March, 1908, between Armat Moving Picture Company, and American Mutoscope & Biograph Company.

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- 3 Thereupon WILLIAM P. HERBST, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Herbst? A. Washington, D. C.

Q. How long have you been a resident of Washington? A. Since 1886.

- 4 Q. In what business are you engaged? A. I am engaged in the drug business, and also in the motion picture exhibiting business.

Q. How long have you been engaged in the motion picture exhibiting business? A. Four years, or a little over.

Q. Do you own, or are you interested in a motion picture theatre in Washington? A. I am interested in the Circle Theatre, at 2105 Pennsylvania Avenue.

Q. How long have you been interested in the Circle

Theatre? A. Well, three years. We started about three years ago. 1

Q. What is the seating capacity of your theatre? A. Five hundred.

Q. From what rental exchange do you now take motion pictures? A. The General Film Company, of Washington.

Q. How long have you taken motion pictures from the General Film Company? A. Ever since they were organized.

Q. And before the General Film Company was organized, from what rental exchange did you take motion pictures? A. Miles Brothers.

Q. You have been interested in another motion picture house or establishment, have you not? A. Yes. I established the first Airdome in the City of Washington. 2

Q. What was the capacity of the Airdome? A. About eight or nine hundred.

Q. Mr. Herbst, what is an airdome? A. An open-air moving picture show.

Q. Do you obtain a program, now, from the General Film Company? A. Yes, sir.

Q. What service do you use? A. The first feature reel varies from a week to four days, the second feature varies from seventeen to twenty-one days, and the third feature, as we call it, runs from about twenty-eight to thirty-one days and then a commercial reel. 3

Q. How many reels does that make, altogether, in your service? A. Four reels on week days, and then we run about six reels on Sunday.

Q. Do you select a program in advance and advertise the program? A. Yes, sir.

Q. Do you get out a regular program for distribution in your neighborhood, among your customers? A. We do. I prepared it just before leaving Washington, prepared it ready for the printer on Saturday for the week beginning the 14th. 4

Q. So you have already given the program to the printer for the week beginning December 14th, next? A. Yes, sir.

Q. And this program is one which you will circulate in advance? A. Yes, sir.

Q. Do you find it possible to produce the program you advertise in advance? A. Yes, sir.

1 Q. Do you always do that? A. Oh, yes; without any trouble.

Q. Before you took service from the General Film Company, from what exchange were you obtaining your service? A. We were obtaining it then from the General Film Company, from its place in Philadelphia. I guess that is a branch of the General Film Company there, and then they established an office in Washington, and then we took from them, but previous to that we took service from Miles Brothers.

2 Q. During the period when you were taking motion pictures from Miles Brothers, did you find it possible to select a program in advance and advertise the same? A. We never could depend on it.

Q. Did you ever attempt to advertise a program in advance, and then find that your competitor was able to get the whole or any portion of the program you had advertised the day before you did, or on the same day? A. That has happened frequently.

Q. Do you run any independent features at your place? A. Only large features.

3 Q. But you do display those from time to time? A. Yes, sir.

Q. Do you find that the interest in motion picture shows is increasing or diminishing? A. It is increasing.

Q. Do you find audiences have favorite actors and actresses, for whose work they are constantly looking, and whom they are discussing from time to time? A. Yes, they have decided favorites.

Q. Do you receive letters, circulars, and advertisements from the licensed producers of motion pictures? A. We do.

4 Q. In which you are asked to demand from your exchange certain special subjects which are named therein? A. Yes, sir.

Q. Do you find that the licensed producers of motion pictures are constantly competing among themselves for the favor of the exhibitor? A. Yes, sir.

Q. Do they compete in reference to the quality of their pictures, so far as you are able to determine? A. They are always making a big blow about their pictures.

Q. Do they say whether their pictures are improved over the preceding pictures? A. Yes, sir.

Q. They are always calling your attention to what they are doing? A. Yes, sir. 1

Q. And asking you to demand of your exchange the particular pictures to which they refer? A. Yes, sir.

Q. What service were you giving your audiences four years ago? A. Four years ago, I guess, or I think, the youngest picture was in about ten days, and the others were commercial stuff. I think we run two reels a day at that time.

Q. And now you are running four reels a day? A. Yes, sir, and six reels on Sunday. 2

Q. Having in mind the difference in the quality of the service that you were giving your audiences four years ago, and that which you are giving them now, and also having in mind the increased number of reels in the service, what do you say as to whether the prices have increased, remained stationary, or fallen off? A. Well, for the value we receive, I should say that the price was less.

Q. Do you receive advertising matter from the unlicensed exchanges? A. Yes; from time to time.

Q. And do their solicitors call upon you from time to time, seeking to induce you to change the licensed service for the unlicensed service? A. Yes, sir, particularly the features. 3

Q. And do they offer you any inducements in the way of price? A. Yes, sir.

Q. Do they offer to furnish you with a complete program if you will substitute the unlicensed service for the licensed service? A. Well, they know that I am a staunch supporter of the licensed service, and they don't worry me very much about changing the service.

Q. What projecting machine do you use in your house? A. A Motiograph machine. 4

Q. Where is that made, or by whom? A. It is made in Chicago.

Q. You do not know the name of the manufacturer? A. The Enterprise Manufacturing Company.

Q. Did you ever feel, Mr. Herbst, when the General Film Company was started, that you were obliged to take your service from the General Film Company?

Mr. GROSVENOR: Objected to, on the ground that

1 what this witness may have felt has no bearing on
2 the issues in this case.

The Witness: No, I did not feel like I was compelled to take from them.

By Mr. KINGSLEY:

Q. Were you ever informed that you would be obliged to take your service from the General Film Company, and that you could not take it from an independent source, or
3 some other exchange? A. Not that I know of.

Cross examination by Mr. GROSVENOR:

Q. How long have you had this theatre on Pennsylvania Avenue, in Washington, Mr. Herbst? A. It was opened on the 14th of March, three years ago; it will be three years ago this coming March.

Q. That is one of the larger and most popular theatres on Pennsylvania Avenue, is it not? A. West of Fifteenth Street. Of course, it is really the largest strictly moving
3 picture house on Pennsylvania Avenue.

Q. And in the three years that you have been running it, have you shown the pictures of the licensed manufacturers? A. Yes, sir.

Q. Continuously? A. Continuously, yes, sir.

Q. Then you were showing those pictures before the General Film Company was organized? A. Yes, sir.

Q. And why have you never made the venture to show the independent pictures instead of the licensed pictures? A. Well, I felt that the quality did not come up to my idea of what the pictures should be. At the time, that is, going
4 back three years ago, there was too much blood and thunder stuff on the part of the independents.

Q. Then the pictures that your patrons desired were the pictures, and are the pictures, made by the so-called licensed manufacturers? A. I take it to be that way, yes, sir.

Q. Now, after Miles Brothers' license was cancelled, and after the General Film Company acquired these various so-called licensed exchanges, what source was there from which you could obtain these pictures which you say you had been displaying, and which your patrons demanded, other than

the General Film Company? A. Those particular pictures? 1

Q. Yes. A. There were two means of obtaining those pictures, from the exchange in Washington, and the one in Philadelphia, and the Washington man being a very undesirable party, why, we went to Philadelphia to get them. Of course, I think they were both owned by the General Film Company, at least I think they were under the management of the General Film Company.

Q. You mean the Washington branch was also another branch of the General Film Company? A. Yes, sir. 2

Q. Now, this is my question, and you have not answered it, and I don't think you understood it, Mr. Herbst; from what source can you get these licensed pictures, that is, the pictures of these manufacturers which you say your patrons want in your theatre, from what source can you get those pictures other than from the General Film Company?

A. At the present time we can get them from the General Film Company and we have been approached, I think, by the Greater New York Film Rental Company. We have just in the last month or six weeks been offered that service by them.

Q. Do you know of any other source of supply of those pictures than the General Film Company and this Greater New York Film Company which recently made you an offer? A. I don't know of any. 3

Q. Whether or not you felt or feel now that you are compelled to get the pictures of the General Film Company, the fact is that is the only source from which you can obtain those pictures that you want. A. That is the only source, those two I have mentioned.

Q. You display pictures of different ages, don't you? A. Yes, sir. 4

Q. Now, a picture, say, ten days old, or a picture, say twenty days old, you pay the same for whether it is made by the Vitagraph Company, or the Edison Company, or the Biograph Company, is that not the case? A. Well, our service is arranged in this way, as I understand it: We have a certain feature for our first-feature reel, a certain feature for our second-feature reel, and a certain feature for the third-feature reel, and a fourth reel would be put in from the other makes in order to balance up our program, and we pay so much per week for that service.

Q. And the price does not change whether the program

1 is made up of Edison, Biograph, and Essanay, or made up of Lubin, Pathe, and Selig, does it? A. No, sir, of certain runs.

Q. You advertise other pictures besides the first-run pictures, don't you? A. Yes, sir, we advertise all three of the features.

Q. And the third feature you advertise is, as you say, a picture that has been out how many days? A. Well, from twenty-eight to thirty-one days old.

2 Q. Now, if a theatre paid more than you paid for that thirty-day old picture, and displayed it when it was only ten days old, would you consider that unfair competition? A. How was that?

Q. You testified, as I understood, on direct examination that you considered it unfair, after you had advertised a picture, for another theatre to display the same picture in advance of you?

3 Mr. KINGSLEY: I object to that question. The witness did not make any statement as to how he considered that situation. He simply described a condition which had presented itself to his attention several times in his business experience.

The Witness: What was the question?

Mr. GROSVENOR: Just read the question.

The question was read to the witness by the Examiner, as follows:

4 "Q. You testified, as I understood, on your direct examination that you considered it unfair, after you had advertised a picture, for another theatre to display the same picture in advance of you?"

The Witness: Well, at that time when we would advertise a certain picture that was ten days old, or one day old, the party below us could get the same picture on that day, but now I can show that picture, and I will not be interfered with by any other house in the City of Washington.

By Mr. GROSVENOR:

Q. That is to say, the General Film Company won't give

it to anyone else? A. As I understand it, they only have one reel, and they cannot give it to anybody else, and so I am assured of showing it on a certain date, and nobody else will have it in Washington. 1

Q. Are features an important part of the program in your theatre? A. Yes, sir, they are playing quite an important part at the present time.

Thereupon JOSEPH P. MORGAN, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 2

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Morgan? A. In Washington.

Q. How long have you lived in Washington? A. About eight years.

Q. In what business are you engaged? A. Exhibiting moving pictures.

Q. And how long have you been an exhibitor of moving pictures? A. Six years, this month. 3

Q. Do you own or manage a theatre? A. Interested in one, and the manager of it.

Q. What theatre are you the manager of? A. The Princess Theatre.

Q. How long have you been the manager of the Princess Theatre? A. Two and a half years.

Q. Where is the Princess Theatre? A. It is located at 119 to 123 Eighth Street, Northeast.

Q. What is the seating capacity of the Princess Theatre? A. Three hundred and sixty. 4

Q. Now, before you became interested in the Princess Theatre, were you connected with any other theatre? A. The Scenic Theatre.

Q. And where is it located? A. No. 1305 Wisconsin Avenue.

Q. What was the seating capacity of it? A. Two hundred and sixty some odd.

Q. How long were you connected with the Scenic Theatre? A. Three years, or a little over.

1 Q. During the six years you have been in the motion picture exhibiting business in Washington, from what exchanges have you secured motion pictures? A. At first, from the Imperial Film Exchange. Then from the Moore Film Exchange. Then from the Washington Film Exchange, and then, before the Washington, from the General Film Company, and then the Washington Film Exchange, and then back to the General Film Company again.

Q. And did the Washington Film Exchange deal in licensed or unlicensed pictures? A. The unlicensed.

2 Q. Was Moore's Film Exchange the successor to the Imperial Film Exchange in Washington? A. It was, yes, sir.

Q. Did the General Film Company succeed Moore? A. Yes, sir.

Q. Now, after Mr. Moore sold his motion picture business to the General Film Company, and after the General Film Company had taken over his exchange, what did Mr. Moore do? A. Why, he exhibited pictures. He is still an exhibitor.

Q. Is he still in the motion picture business? A. Yes, sir.

3 Q. Did he deal in films after he sold his exchange? A. Really, I do not know.

Q. Mr. Morgan, do you secure a definite program in advance for your theatre? A. Yes, sir.

Q. Are you able to pick out your program some days, or even a week or ten days in advance? A. I arrange that by looking over the nature or character of the releases in advance. The companies have their stuff regulated into, say, a certain day's release of comedies, and on other days, Westerns, and on other days, dramas, and I try to arrange my schedule so I will get a variety every day, if possible.

4 Q. Do you succeed in doing that? A. Yes, sir, very much.

Q. About how many days are you able to select your program in advance? A. It is not selected. It is booked in advance. I can get it for three or four weeks, I should judge.

Q. For how long do you get it in advance? A. Probably I get it a week in advance.

Q. So that, if you wish to, you are able to advertise a program a week or ten days in advance? A. Yes, sir.

Q. Did you find this possible when you were taking service from Moore's Film Exchange? A. Absolutely not. 1

Q. Or from the Imperial Film Exchange? A. No, sir.

Q. Were you able to select a program in advance when you were taking service from those former exchanges before the General Film Company was organized? A. No, sir.

Q. Did you have any difficulty in those days with repeaters, or with conflicting programs? A. Yes, sir.

Q. Did you ever have the experience of advertising motion pictures, or a part of your motion picture program, or the whole of a motion picture program, in advance, and then finding that your competitor was able to show the same picture or pictures about the same time you did, or even a little bit in advance of you? A. Yes, sir. 2

Q. And did that happen occasionally or frequently? A. Why, occasionally.

Q. Has this happened to you since you have been taking service from the General Film Company? A. No, sir.

Q. Have you been able to get a clear program? A. Yes, sir.

Q. Ever since you have taken service from the General Film Company? A. Yes, sir. 3

Q. What do you say as to the prices of motion pictures now, as compared with what they were when you went into business? A. I think the prices are cheaper when you take the value into consideration, and what we can do with the stuff in advance by having the advantage of advertising it, and so forth.

Q. Do you receive circulars and advertisements from the licensed producers of motion pictures from time to time? A. Yes, sir.

Q. Do they call your attention to the merit of their productions, and ask you to insist upon securing certain subjects from your exchange? A. Yes, sir. 4

Q. And are you solicited from time to time by representatives of the unlicensed producers of motion pictures? A. Yes, sir.

Q. Do they offer you a complete program? A. Yes, sir.

Q. Do they offer you any inducements in price? A. In what way do you mean, inducements?

Q. Do they offer you a younger service at a cheaper price? A. I never got down to that question with them.

1 Q. Were you ever connected with any exchange? A. Yes, sir.

Q. What exchange were you connected with? A. The Imperial Film Exchange, and Moore's Film Exchange.

Q. When you were connected with those two exchanges did you have any experience as to the feasibility of furnishing a definite program to the exhibitor? A. I found it was absolutely impossible.

Q. Tell us what position you occupied with those exchanges? A. I occupied the position of booker and assistant manager.

2 Q. And was it a part of your duty to fix the service for the various customers or exhibitors? A. Yes, sir.

Q. Why did you find it impossible to furnish a definite program to them? A. There were about half a dozen exchanges serving the stuff in the same territory that we were serving.

Q. You mean by that, that your competitors furnished similar service to your own? A. Yes, sir.

3 Q. And you found that your competitors often furnished a competing exhibitor theatre with the service you were supplying? A. Yes, sir.

Q. And, consequently, the two exhibitors were injuring each other? A. Yes, sir.

Q. Did you endeavor to get away from this condition? A. Yes, sir, I used to sit up half the night four or five nights in a week, waiting for long distance 'phones and telegrams, letters and everything else from exhibitors, and they would try as hard as they could, just as our customers would try, to get a line on what our competitor was to get, in order to give me the information so that I could keep them clear, but I found it was impossible to do it.

4 Q. Did you actively solicit the business of the exhibitors in those days? A. Yes, sir.

Q. Did you make programs and offer them inducements to come with you? A. In those days you had to promise most anything they asked you for, in order to get their business, because all of the exchanges were doing the same thing.

Q. So a kind word and a promise were very common? A. Yes, sir.

Q. Did you carry out the promises which you made so freely? A. No, sir.

Mr. GROSVENOR: I object to that testimony on
the ground that counsel is sort of discrediting his
own witness. 1

By Mr. KINGSLEY:

Q. You could not keep them? A. No, sir.

Mr. GROSVENOR: You knew you could not keep
them when you made them?

The Witness: In order to compete with the other ex- 2
changes you had to do it, all of them were doing it.

By Mr. KINGSLEY:

Q. An exhibitor was no worse off in believing your prom-
ises than in believing the promises of your competitor? A.
They would try us for a week, and then change to another
exchange, and then go to another one for a week, and they
would shift around from week to week.

Q. What motion picture projecting machine do you use
in your theatre? A. The Motiograph. 3

Q. Have you used a Motiograph all of the time since
you have been in business? A. Since I have been with the
Princess.

Q. What did you use at the other theatre? A. An Edi-
son.

Q. You say that you think the service is now cheaper
than it was when you went into the business? A. Yes, sir.

Q. How large a program are you furnishing your aud-
iences now? A. Three reels for five cents and five reels
for ten cents on Sunday.

Q. What are you paying the exchange? A. Fifty dollars 4
a week.

Q. What service did you furnish your audiences when
you went into the business? A. One-reel pictures for five
cents, and two reels for ten cents.

Q. What were you paying the exchange then? A. Thirty
dollars per week for one reel.

Q. And now you are paying fifty dollars per week for
three reels? A. Yes, sir; three reels six days in the week,
and five reels on the seventh.

1 Q. Do you find that motion picture audiences have favorite actors and are interested in certain members of the dramatic profession? A. Yes, sir.

Q. And do you find that they look for the plays in which those actors appear? A. Yes, sir.

Q. And that they discuss them and discuss their acting? A. Yes, sir.

Q. And their dramatic work? A. Yes, sir.

2 Q. What do you say as to the character of motion pictures which you display to audiences at present, in comparison with the motion pictures which you showed when you went into the business? Have they improved in their artistic features and in other respects? A. They have improved wonderfully, yes, sir.

Q. Do you find that among the licensed producers there are some which have greater popularity than the others?

A. In a measure, yes, sir.

Cross examination by Mr. GROSVENOR:

Q. What do you say is the name of your theatre? A. The Princess.

3 Q. And that is the largest and most popular theatre in your part of the town, is it not? A. No, sir.

Q. What theatre is there that is larger than yours? A. There are three larger than mine, in my part of the town.

Q. How long have you had that theatre? A. Two and a half years, or a little over.

Q. During that time, have you displayed the pictures of the licensed manufacturers? A. Not all of that time, no, sir.

Q. When did you display the independent pictures? A. Two years ago this past Summer.

4 Q. Was your license cancelled? A. No, sir.

Q. And how long did you display the independent pictures? A. As far as I can remember, two or three months.

Q. And then what made you go back to the so-called licensed pictures? A. Just for a change, to see whether my patrons liked it any better, or not.

Q. But why did you go back to the licensed pictures, after using the independent pictures? A. Just to change my program.

Q. And since then, have you used the licensed pictures? A. Yes, sir.

Q. You found the independent pictures unsatisfactory, in holding your patrons? A. Why, I found that some of my patrons liked them, and others did not like them. 1

Q. You pay the same for the pictures of each manufacturer, provided they are of the same age? A. Yes, sir.

Q. That is, the price is determined, not by the name of the manufacturer, but by the age of the picture? A. Yes, sir.

Q. It is true, is it not, that in a number of pictures ten days old, some are more desirable than others? A. Some pictures? 2

Q. Yes; is that true? A. I don't catch what you mean.

Q. Well, you have a program in which you show some thirty-day old pictures, and some twenty-day old pictures, and some ten-day old pictures? A. Yes, sir; about that.

Q. When it comes to selecting your reel that is ten days old, you have a certain number that you may select from; is that the fact? A. No; it is booked up, as I explained a few moments ago. We get a schedule in advance.

Q. Fixed by the General Film Company? A. I select the different reels I want to run on different days. I get data on what certain dates different manufacturers release comedies, dramas, etc., and I try to arrange them on my schedule so that my program will be varied. 3

Q. When you select a reel that is thirty days old, on your program, you select it from quite a number of other reels that are also of the same age? A. Quite a number of other reels?

Q. How do you select, then, a picture thirty days old, to put on a program? A. I ask for certain reels, at a certain age.

Q. Do you name the reels? A. Why, the make of it, yes. 4

Q. You pick out that make from quite a number of other makes of the same age? A. No, there could not be quite a number thirty days old. There could not be more than—they only release six reels a day.

Q. How many would there be to select from? A. Making six reels a day, there would be six to select from, provided they are open. They are not always open.

Q. Now, suppose you had a selection of the six? A. Yes, sir.

1 Q. Those six reels are all the same price, are they not?
A. Yes, sir.

Q. And some are more desirable than the others? A. The way I do that is, if I have a Western for my first reel and a comedy for my second, I then try and arrange for a drama—

Q. You try to select one out of the six? A. Yes; try to get a drama.

Q. And whether you can get that one, or the other, you pay the same? A. Yes, sir.

2 Q. Are features an important part of the program in your theatre? A. Yes, sir.

Q. Why is that? A. What kind of features do you mean, the licensed features or the unlicensed features?

Q. I mean the feature itself, say, a licensed feature of two or three reels, or a multiple reel? A. Yes, sir; they play an important part.

Q. Why is that? A. Really, I couldn't tell you; the people, perhaps, like it.

3 Q. Why do your customers like special features? A. They like it at times. I don't suppose they would like it every night.

Redirect examination by Mr. KINGSLEY:

Q. Is it your experience that the question of the quality of two pictures, and their desirability, is a matter of taste and judgment, and that different people might think differently, and often do think differently? A. Yes, sir.

Q. So that what you might prefer might not please the public? A. Sure; yes, sir.

4 Q. Now, you pay fifty dollars a week for your service? A. Yes, sir.

Q. And you pay that fifty dollars for a certain number of reels? A. Yes, sir.

Q. And when you select certain reels to make up your program, you don't have in mind the cost of any one reel, or just what proportion of your fifty dollars that one represents? A. No, sir.

Q. What you know is, that, with a certain number of reels, you can have some latitude of selection? A. Yes, sir.

Q. And you use your best judgment in selecting your program? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

1

Q. And if you cannot get the reel that your best judgment desires or indicates you should get, you pay just the same for some other reel? A. Pay just the same; I usually get what I want.

Q. But, I say, when you do not get what you want, you pay the same for another reel? A. If I do not get it exactly in that way today, I get it tomorrow, so it averages up.

Q. Leaving out tomorrow, and taking it today, if you do not get the reel your best judgment suggests you should get for today, you pay just the same for the reel you do get? A. Yes, sir.

2

Redirect examination by Mr. KINGSLEY:

Q. But, if you cannot get the reel you want today, the exchange tries to co-operate with you and tries to please you and give you something that will satisfy you and make up an adequate program? A. Yes, sir.

3

Thereupon W. F. KINSON, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Kinson, what is your residence, and in what business are you engaged? A. Pittsburgh. Film rental business.

Q. And with what company are you connected? A. The General Film Company.

4

Q. What position do you occupy? A. Branch manager.

Q. You are the branch manager of the exchange located in Pittsburgh? A. Yes, sir.

Q. And there are two branches of the General Film Company at Pittsburgh, are there not? A. Yes, sir.

Q. How long have you been the branch manager? A. Since January, 1911.

Q. How do you distinguish the two branches there of

1 the General Film Company? A. The Calcium branch and the Columbia branch.

Q. Which is your branch? A. The Calcium branch.

Q. Now, prior to January 15th, in what business were you engaged? A. The film rental business.

Q. And where? A. In Pittsburgh.

Q. With what company were you connected? A. The Pittsburgh Calcium Light & Film Company.

Q. Did you remain with that company after it sold out to the General Film Company? A. I did.

2 Q. Who were the principal owners of that exchange? A. Richard A. Rowland and James B. Clark.

Q. In what class of pictures did they deal after they sold out to the General Film Company, the licensed or unlicensed? A. Unlicensed.

Q. Then do you know about what time they sold to the General Film Company? A. I couldn't say positively. I think, in October of 1910.

3 Q. Did they continue their operations as a film exchange immediately after selling to the General Film Company? A. No. Mr. Clark was connected with the General Film Company for several months as the branch manager.

Q. What business was the Pittsburgh Calcium Light Company continuing to transact, if any, immediately following the sale to the General Film Company? A. They were in the film rental business, representing the unlicensed service.

Q. Then there was no interruption in its business? A. No, sir.

4 Q. What was the character of the business that they did, in point of extent and volume? Did they conduct a profitable business? A. I never saw the books, and I couldn't say positively, but they must have, or they would not have continued in it until the present date.

Q. How many customers did they continue with, or how many customers did they have in the interval between the sale to the General Film Company, which you stated was in October, 1910, and the following January, when you left them? A. I could not say.

Q. Did they have a good many customers? A. I should say they did, yes, sir.

Q. And about how many, would you say? A. I should 1
imagine, about a hundred and twenty-five.

Q. What was the condition of the exchange business in
Pittsburgh during the year 1910, and up to the time of the
sale of the Pittsburgh Calcium Light Company to the Gen-
eral Film Company? A. It was pretty bad.

Q. In what way was it bad? A. Why, the exchanges
were cutting one another, and the exhibitors could not obtain
a very satisfactory service. An exhibitor would arrange
with an exchange for a certain film, and his opposition, no-
ticing him advertising it, would go to another exchange and 2
obtain it ahead of him, getting the benefit of his advertising.

Q. Were there many complaints among exhibitors on that
score? A. A great many.

Q. How many exchanges were operated in that territory
prior to the sale to the General Film Company? A. About
five.

Q. Can you name them? A. Pennsylvania-Columbia
Film Company, Duquesne Amusement & Supply Company,
Pittsburgh Calcium Light & Film Company—

Q. Were they all licensed exchanges? A. The first three.
The Independent Film Exchange and the J. Frank Hatch 3
Film Exchange.

Q. What is the territory served by your branch of the
General Film Company? A. Western Pennsylvania, eastern
Ohio, northern West Virginia, and western Maryland.

Q. Do you have many customers in western Maryland in
that territory? A. I think, four.

Q. Do you know what territory is served by the Columbia
branch of the General Film Company? A. The same ter-
ritory.

Q. Both branches, then, are operating in the same ter-
ritory? A. Yes, sir. 4

Q. Do you make any efforts to divide the territory be-
tween you, or is each branch free to go into that territory,
or into any other territory where it can get business? A.
We go anywhere we can get business.

Q. Who is it that does the selection of the pictures to be
purchased or leased by your branch of the General Film
Company? A. We do it ourselves, following the requests
of exhibitors as far as possible.

Q. Does the home office undertake to influence you in any
way in the selection of pictures? A. No, sir.

1 Q. Are you free to put in a standing order with the manufacturer who sells it, whenever you see fit? A. We are.

Q. Are you free to determine the number of prints that you will take of each picture? A. We are.

Q. Is there any attempt to influence you or control you whatever in the selection of your pictures? A. There never has been and is not now.

Q. Then you are guided solely by the demands of your customers for this print or that print of picture? A. Yes, sir.

2 Q. Do you know how many motion picture theatres there are in the territory served by your branch of the General Film Company? A. Five hundred and ninety-six.

Q. How do you know that that is the exact number of motion picture theatres in that territory? A. It is taken from my own records.

Q. And how are your own records made up? A. From reports of my road representative, and also from letters received from exhibitors.

3 Q. Do you make it a point to keep posted as to every theatre building or in process of construction in your territory? A. Naturally.

Q. Now, of that number of theatres in your territory how many are served by your branch of the General Film Company? A. One hundred and eighty-eight.

Q. What competition have you in that territory? A. The Mutual and the Universal and the special features.

Q. How many special feature companies are operating in Pittsburgh and in that territory? A. I think, eighteen.

Q. Will you name the principal ones? A. Weiland Film Exchange, Warner Features, World Special Features Company. They are the principal ones.

4 Q. Does the Famous Players Film Company operate in your territory? A. Yes, sir.

Q. Then do all of the special feature companies, which you say amount in the aggregate to eighteen, have offices for the regular transaction of business in Pittsburgh? A. Yes, sir.

Q. Do you know the total weekly purchases by those special feature film companies? A. Well, that is almost impossible to determine, because the smaller ones do not buy any stated amount. I could say, though, that Weiland purchases twenty-one regularly, and Warner, eighteen.

Q. Well, you used the word "regularly." Do you mean 1
sometimes they purchase in addition to their regular number of features, extra features? A. No, that is all the regular purchases, as I understand.

Q. Well, that accounts for two out of the eighteen. What would you say are the aggregate purchases of the remaining sixteen? Would it equal that number, or do you know? A. I don't know that I could say.

Q. But you know that they are all actively in business in your territory? A. Yes, sir.

Q. And on the lookout for business all the time? A. 2
Yes, sir.

Q. And from time to time putting their service in any one or more of the theatres that are supplied by your branch? A. Yes, sir.

Q. The Weiland Special Feature Company, do you happen to know whether that operates generally throughout the country, or is it local to Pennsylvania? A. Local.

Q. It is? A. Yes, sir.

Q. What are the total number of weekly purchases of releases by your branch? A. Forty-two, regularly, and 3
sometimes we get as high as forty-six

Q. Do you know how many theatres there are in the City of Pittsburgh seating five hundred or over? A. Approximately five.

Q. Do you know who serves those theatres? A. Yes. Two are served by the General Film Company, and three by the unlicensed exchanges.

Q. And does that include those that are served by your branch as well as the other branch of the General Film Company? A. Yes, sir.

Q. Can you name some other large city in your territory? A. Johnstown.

Q. How many large theatres are there in Johnstown? 4
A. Four.

Q. And how are those four theatres divided as to the service? A. Two use our service, and two use the unlicensed service.

Q. What other large city in your territory? A. Altoona.

Q. What is the population of Altoona? A. I couldn't say positively, I think it is close to 75,000.

1 Q. How many theatres of that class are located there?
A. One.

Q. Who serves that one? A. The unlicensed exchange.

Q. What other large city in your territory? A. I can't think of any other, just now. There are not very many large towns around Pittsburgh.

2 Q. You have stated that you were with the Pittsburgh Calcium Light Company prior to its sale to the General Film Company, and continued with that company for a few months after the sale, and then went with the General Film Company. Now, are you prepared to say whether or not the General Film Company raised the cost of service to the exhibitor after it commenced to operate in Pittsburgh?
A. They did not.

Q. What is the average price? A. Thirty-two dollars and five cents.

Q. That service is a daily change of program, is it? A. Yes, sir.

Q. By the way, are the most of the theatres in your territory taking a daily change of program? A. Yes, all of them.

3 Q. How many reels do you give them? A. I average about eighteen per week.

Q. That would be three per day? A. Yes, sir.

Q. How many reels were the theatres that were supplied by the Pittsburgh Calcium Light Company taking per week at the time they sold to the General Film Company? A. The same number.

Q. And what was the average price, was it more or less than the average price you are getting now? A. Well, I couldn't say. I believe it was just about the same. I don't think there has been very much change.

4 Q. In point of the character of the service, the character of the pictures, and the attractiveness of the pictures, is there any difference in the service now and what it was at that time? A. Personally, I think it is better than it was then.

Q. You think it has improved? A. Yes, sir.

Q. Then do you think that the exhibitor is getting more for his money now, than he did then? A. Yes, sir.

Q. And without any increase in cost? A. Yes, sir.

Q. Do you find any towns in your territory where one

or more motion picture theatres are to be found which are not supplied by the General Film Company? A Yes, sir. 1

Q. Are those instances few or many? A. Well, they are not very many.

Q. Who supplies the service in those towns, if you know?

A. I cannot tell you the exact exchange, though it is the unlicensed service which is being used in those towns.

Q. Then it is either the Mutual or Universal program?

A. Or the features.

Q. To what extent is a customer at liberty to select his own program in your branch? A. Well, we arrange the service for customers by a schedule which gives them the benefit of advance advertisement. If their show isn't what they desire, that is, if there isn't the variety they want, they are at liberty to make requests, and we comply with their requests as far as possible. 2

Q. When you take on a customer, does he indicate to you the character of service he wants, in point of the age of the film, and the character of the pictures? A. Yes, sir.

Q. And when you take him on, you give him what he wants? A. Yes, sir, as far as possible.

Q. Suppose an exhibitor is dissatisfied with any picture that he finds in his schedule, is he at liberty to change it? A. He is. 3

Q. Do you know whether any other branch of the General Film Company is serving any customers in the territory served by your branch? A. No, they are not.

Thereupon HARRY E. NICHOLS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 4

Direct examination by Mr. CALDWELL:

Q. Mr. Nichols, where is your residence, and in what business are you engaged? A. Engaged in the moving picture business in Pittsburgh, Pennsylvania.

Q. In what branch of the motion picture business? A. The Columbia branch of the General Film Company.

1 Q. And what position do you occupy? A. At present, manager of that branch.

Q. How long have you been the branch manager? A. Since January 13, 1912.

Q. And prior to that time, what business were you engaged in? A. I was connected with the General Film Company at the same office.

Q. In what capacity? A. I was then assistant manager and office man.

2 Q. How long had you been assistant branch manager there? A. From the time the General Film Company was formed, or took over the Duquesne Amusement Company, which, I think, was in October or November of 1910.

Q. Then were you connected with the Duquesne Amusement Company? A. No, not connected with the Duquesne Amusement Company. I was with the Pennsylvania-Columbia Film Exchange.

Q. How long had you been connected with the Pennsylvania-Columbia Film Exchange? A. I should judge, a year.

3 Q. Do you happen to know anything about the history of the Pennsylvania-Columbia Film Exchange in Pittsburgh? A. I do, a little. That was just about the time I started in the film business.

Q. Did it always do business under that name, do you know? A. Yes, that branch, the Pennsylvania-Columbia.

Q. At one time, do you know whether or not there was an exchange known as the Pennsylvania Film Exchange? A. Yes, sir.

Q. And another one known as the Columbia Exchange? A. Yes, sir, and they were consolidated, and made the Pennsylvania-Columbia Film Exchange.

4 Q. And they were both licensed exchanges? A. Yes, sir, as far as I understand.

Q. Do you know who the owners of those two exchanges were? A. I do not know who were the owners of the two separate exchanges, but Richard A. Rowland and James B. Clark were the owners of the Pennsylvania-Columbia Exchange.

Q. They also owned the Pittsburgh Calcium Light Company? A. Yes, sir.

Q. And operated them both at the same time as licensed exchanges? A. Yes, sir.

Q. Did they sell out to the General Film Company? 1

A. Yes, sir.

Q. At about the same time? A. Yes, sir.

Q. And were you connected with the Pennsylvania-Columbia Exchange at the time they sold to the General Film Company? A. Yes, sir.

Q. Now, did you remain with the Pennsylvania-Columbia Exchange after the sale? A. I went with the General Film Company.

Q. Immediately after the sale? A. Yes, sir.

Q. Well, did the Pennsylvania-Columbia Exchange continue in business as an unlicensed exchange after the sale to the General Film Company? A. Oh, no, sir; the Pennsylvania-Columbia went out of business then and consolidated with the Duquesne Amusement Company. 2

Q. Under what name? A. Under the General Film Company—Columbia branch.

Q. By saying "consolidated" do you mean to say that the stock of the Pennsylvania-Columbia Film Exchange was consolidated with the stock of the Duquesne Amusement Company? A. I don't know about the stock, but I know they moved together. 3

Q. Isn't the fact this, that the Duquesne Company, or the Duquesne branch, and the Columbia-Pennsylvania branch were consolidated as one branch of the General Film Company? A. That is right.

Q. And you do not mean to say that there was a stock consolidation? A. No, sir.

Q. Or a merger of the two companies? A. No, sir, not that.

Q. Do you know whether Messrs. Rowland and Clark continued in the film exchange business after the sale to the General Film Company? A. They did, yes, sir. 4

Q. And what was the name of the company under which they continued in business? A. Mr. Clark continued with the General Film Company for a few months, but at the same time he had the Independent Film Exchange of Pennsylvania.

Q. And do you know whether the Independent Film Exchange, which had been, as I understand, giving unlicensed service, prior to the time of the sale to the General Film Company, afterwards consolidated with the Pittsburgh Cal-

1 cium Light Company, or that Messrs. Clark and Rowland thereafter conducted two exchanges? A. Yes, sir; they conducted two independent film exchanges, the Pittsburgh Calcium Light and Feature Film Company.

Q. Do you know anything about the extent of the business they did, following the sale to the General Film Company in Pittsburgh, in unlicensed pictures? A. They must have thought a great deal of it, or that the business was very good, for they opened another exchange, and bought the Pittsburgh Photo-Play Company from another firm there.

2 Q. And they operated three exchanges after that sale? A. Yes, sir, and virtually controlled the independent output in Pittsburgh at that time.

Q. You have heard the testimony of Mr. Kinson as to the territory served by the Pittsburgh branches of the General Film Company? A. Yes.

Q. And the statement he made as to the territory served is correct? A. Yes, sir.

3 Q. Who are your competitors in that territory? A. We have the Mutual, the Universal, Warner's Features, Famous Players Company, Helen Gardner Company, and quite a number of other features.

Q. Who handles the Universal program in that territory? A. Independent Film Exchange.

Q. Is that the exchange of which Messrs. Clark and Rowland are the owners? A. Yes, sir.

Q. Who handles the program of the Mutual? A. Pittsburgh Photo-Play Company.

4 Q. Do you know whether or not Mr. Warner, who runs the Warner Feature Film Company, was formerly connected with another exchange in Pittsburgh? A. Yes, sir; he was formerly one of the owners of the old Duquesne Amusement & Supply Company. After he sold that to the General Film Company, he formed the Pittsburgh Photo-Play Company.

Q. And do you know whether that company, from the start, did a profitable business, or an extensive business? A. They did quite an extensive business, but I can't say whether it was profitable, at that time, or not.

Q. How many of those special feature film companies are operating in Pittsburgh, if you know? A. I think, about eighteen, or something like that. Eighteen or nineteen, I am not sure which.

Q. Who are the principal ones? A. Warner's Features, the Weiland Feature Company, Worlds Famous Players, the Helen Gardner Company, and I guess about all of the other features that are made, come into Pittsburgh. 1

Q. Do they all have offices in Pittsburgh? A. Yes, sir.

Q. Do you know how many motion picture theatres there are in that territory? A. Five hundred and ninety-six in our territory.

Q. And of that number, how many are served by the Columbia branch of the General Film Company? A. One hundred and sixty-three.

Q. Do you know whether, in that territory, any exhibitors are served by branches of the General Film Company other than the two branches maintained at Pittsburgh? A. No, sir; they are not. 2

Q. What is the extent of the competition that you are having with the Mutual, the Universal and the special feature companies in your territory? Tell us something about that? A. I don't just quite understand that. What do you mean by extent of business?

Q. Well, how are you competing with each other? Are you getting their customers? A. We make every effort in the world to get their customers, the same as they do with ours. 3

Q. Do you sometimes get some of their customers? A. Yes, sir. They have representatives on the road, the same as we do. We will have an exhibitor today, and they may have him tomorrow.

Q. There are constant fluctuations, then, in your exhibitors? A. Yes, all the time.

Q. You are losing some, and gaining others? A. Yes, sir.

Q. Has the number of exhibitors served by your branch varied much in the aggregate number since January, 1912? Have you increased or diminished during that period? A. Well, one week we may have ten exhibitors more than we had the last week, and the next week we may have fifteen exhibitors less, and that is the way it has been ever since I have been the manager. 4

Q. Have the Famous Players and Warner Features and the other special feature companies been putting their service into many of your houses? A. Yes, sir; quite a number.

Q. What is the practice and custom where they put in

1 their service in one of your houses? Does it take that custom away from you entirely, or only for part of the time? A. It takes the custom away for the time he is running the features. If he is running big features, he will not use my service, or service from my branch.

Q. Is the practice of motion picture theatres in your territory, of taking on special service, on the increase, or decrease? A. It is on the increase.

Q. For how long a time has the competition with those companies been going on? A. I should say, at least a year.

2 Q. Then is it, or is it not a new development in the business? A. It is a new development. I have noticed it more so in the last four or five months.

Q. Is it constantly growing? A. Yes, sir.

Q. Would you be prepared to say about what percentage of the business, so far as the volume is concerned in dollars and cents, the special feature people have in Pittsburgh? A. That would be a hard matter for me to answer.

3 Q. How many theatres in Pittsburgh are putting in that service today and using it today? A. Well, that would be a hard matter. We have one hundred and twenty-one theatres in the city, and I should judge that sixty to seventy per cent. of them are running features. Any house that has a seating capacity of from three hundred to four hundred seats will occasionally put in a big feature.

Q. You heard the testimony of Mr. Kinson as to the larger theatres that were served with the General Film Company's service in certain cities in his territory? A. Yes, sir.

Q. And does that testimony of his accord with your own recollection of the matter? A. Yes, sir, it does.

4 Q. And, in enumerating the theatres supplied, the larger theatres supplied in those cities, were the theatres served by your branch included? A. Yes, sir.

Q. What is the average cost of service to an exhibitor served by your branch? A. Well, one week it may be thirty-two dollars, and the next week it may be thirty-four dollars, and the next week it may be thirty-one dollars. It will average from thirty-two to thirty-three dollars.

Q. You had been with the Pennsylvania-Columbia Film Exchange for some time prior to its sale to the General Film Company. A. Yes, sir.

Q. And remained with the General Film Company after that sale as branch manager, or assistant branch manager?

A. Yes, sir.

Q. Are you prepared to say whether or not the prices to the exhibitor were increased by the General Film Company after it had acquired all of the licensed exchanges in Pittsburgh? A. No, it was not.

Q. Do you know what the average cost per customer was at that branch prior to the sale? A. No, I can't give you that.

Q. Well, how many reels were supplied? A. At that time?

Q. Yes, daily change? A. To the exhibitor?

Q. Yes. A. On an average, eighteen per week, three a day.

Q. And what is the practice now in your branch? A. It is the same thing. It averages about eighteen reels per week.

Q. Is the exhibitor getting a superior or an inferior service to what he did then? A. He is getting a great deal better service.

Q. In what respects do you consider it better? A. The class of the goods, the class of the pictures, and we are able, now, to advise him two or three weeks in advance as to his program, and it gives him the advantage of that in the way of advertising it.

Q. What is the practice in your branch as to making up a program for an exhibitor? Do you have the schedule booking, or what is known as the open booking? A. No, we have the schedule.

Q. Well, to what extent is the exhibitor at liberty to select his own program with you? A. We make an effort, at all times, to please our customer, to give him as nearly as possible what he desires. If he gets a reel that he does not care for, we make the change, if possible.

Q. Do you find that the exhibitor prefers to have you prepare his program for him, or to make it out himself week by week? A. We have quite a number that leave that entirely to us. We have a few that will make requests to make changes.

Q. Are those requests granted for changes? A. Very often. Just as often as we can make the change.

Q. Do you find that it often happens that a request is

1 made that you cannot comply with, is that frequent? A. Yes, sir, that is very true.

Q. Will you state how frequently it happens in your district that a customer requests a change to be made in his program which you can't comply with? A. Well, that is rather a hard question. I may get two or three today, and I may not get another one for a week.

2 Q. And when you are unable to comply with the request, what is the reason for it? A. It is probably because the man is not entitled to the picture, or it is because I can't give it to him on the day that he wants it. It is probably booked for some other customer in some other district, but if I can make the change two or three weeks later I always do it. I always put him under the impression I will supply the change, and tell him exactly when I will make the change.

Q. Does it often happen that the change he requests cannot be given to him because it is scheduled at that particular time for another exhibitor? A. Yes, sir.

3 Q. You made a statement that sometimes when the request was made you could not comply with it because the customer was not entitled to it. What did you mean by that? A. Well, probably he was not entitled to it on account of its going to some other exhibitor, the other exhibitor would be entitled to it, and he may have come in and asked me for a certain picture, and I tell him I can't give it to him because some other exhibitor is entitled to it. For instance, say there are two or three of the Vitagraph Company's, and one man is getting two, and the other one, one. This exhibitor comes to me, and says, "I would like to have that other Vitagraph," and I can't give it to him because I have already agreed to give it to the other man.

4 Q. And are you now referring to two exhibitors located near each other, and competing? A. Yes, sir, in direct competition with each other.

Thereupon, at 12:10 o'clock P. M., the hearing was adjourned until 2:30 o'clock P. M., at the same place.

NEW YORK CITY, December 9, 1913. 1

The hearings were resumed, pursuant to adjournment, at 2:30 o'clock P. M., December 9, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

FRED C. AIKEN, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows: 2

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Aiken, and in what business are you engaged? A. I live in Chicago, Illinois, and am a special representative for the General Film Company.

Q. How long have you been such special representative? A. Since about the middle of 1911.

Q. Just what are your duties as special representative of the General Film Company? A. I have supervision over certain branches in my territory. 3

Q. What branches are they? A. Those of Minneapolis, Omaha, Kansas City, St. Louis and Indianapolis.

Q. When you say you have supervision over those branches of the General Film Company, just what do you mean? A. With reference to the business system and conduct of the offices, systematizing the business, booking department, and so forth.

Q. Do you have or exercise any control over the selection of motion pictures which the branch managers may order for their respective branches? A. No, sir. 4

Q. Or attempt to exercise any control over it whatever? A. No, sir.

Q. Prior to the time when you became special representative for the General Film Company in that territory, what business were you engaged in? A. Just previous to that time, you mean?

Q. Yes. A. President of the Theatre Film Service Company, of Chicago.

Q. What was the date that you said you became special

1 representative of the General Film Company? A. Why, it was some time in 1911. I think it was in September.

Q. Prior to September, 1911, were you in the film exchange business at all? A. Yes, sir.

Q. And what was the name of your company? A. Theatre Film Service Company.

Q. Did that company sell out to the General Film Company? A. It did.

Q. When? A. It was in June, 1910.

2 Q. Now, then, from June, 1910, up to September, 1911, what did you do? A. I was branch manager for the General Film Company in Chicago.

Q. How long had this Theatre Film Service Company been in existence prior to the time when it sold to the General Film Company? A. We were incorporated in January, 1907.

Q. And what connection did you have in the company at that time? A. When we were incorporated, I was vice-president, and a year later I was president. President and general manager.

3 Q. And at the time that you were vice-president, were you also general manager? A. Yes, sir.

Q. So, from 1907 up to 1910, when you sold to the General Film Company, you were the manager of the Theatre Film Service Company in Chicago? A. Yes.

Q. Was that company a so-called Edison licensee during the year 1908? A. Yes, sir.

Q. And did it afterwards take out a license from the Motion Picture Patents Company? A. Yes, sir.

Q. About when did it take a license from the Patents Company? A. We received a license—I think it was January 19th, 1909.

4 Q. Will you state the conditions prevailing in the film rental business in Chicago and surrounding territory during the year 1907, and prior to the formation of the Film Service Association? A. Well, the conditions were what I would call very bad.

Q. In what way were they bad? A. Well, in the first place, there was really illegitimate competition. Sub-renting was the main bad feature, and promises that were being made by different exchanges to secure business, which they could not fulfill, or did not fulfill.

Q. During the year 1907, did you know of the litigation pending between the Edison Company and various manufacturers and importers of motion pictures? A. Yes, sir. 1

Q. Was that litigation a matter of common knowledge in the business in Chicago at that time? A. I think it was.

Q. Can you state whether, in fact, that litigation had any injurious effect upon the business at that time? A. So far as I was concerned, it did.

Q. Why did you think it was injurious? A. Because we really did not know where we were at, and did not know how long we would be able to secure films, or from what source to secure the films, and still not get in trouble. 2

Q. I think you have stated that your exchange was a member of the Film Service Association? A. Yes, sir.

Q. Did you take any part in the formation of that Association? A. Yes, sir.

Q. How active were you in it? A. I was vice-president of the Film Service Association up until January, 1909.

Q. Were you a member of the Executive Committee? A. Yes, sir.

Q. Did you take any part in the preparation of the by-laws of that Association? A. I did. 3

Q. What part did you take? A. One of the Executive Committee.

Q. By whom were the by-laws framed? A. It was framed by the Executive Committee.

Q. And did you actively assist in the preparation of those by-laws? A. I did.

Q. Were the manufacturers members of that Association? A. No, sir.

Q. Do you know whether the manufacturers had any voice in the preparation of those by-laws? A. They did not, to my knowledge. 4

Q. Were the by-laws submitted to the manufacturers or any of them before their adoption? A. They were not, to my knowledge.

Q. Then the by-laws were voluntary self-imposed regulations? A. Yes, sir.

Q. You have spoken about the practice of sub-renting in your territory as one of the recognized evils of the business at that time. To what extent was that practice carried on?

1 A. Carried on to a very great extent. More so as time went on.

Q. And in what way did you think that that practice operated to the detriment of the business as a whole? A. Well, to the extent that we—for instance, our company may have had a certain number of customers whom we were supplying direct at a certain price, and some other exchange would rent those films to a customer in that neighborhood, and permit that customer to sub-rent those films to other customers, the customers of the other exchanges.

2 Q. Well, did it operate to the disadvantage of the exhibitors in any way? A. Why, it did in so far as they were not securing the quality of films that they probably would be able to secure if they secured them direct.

Q. An exhibitor who did not sub-rent, was he on an equal basis with one who did? A. He usually paid about a third of what the exhibitor who did sub-rent, paid.

Q. Was an exhibitor who did not resort to that practice on equal terms as to competition with exhibitors who did? A. He was not on equal terms so far as prices were concerned.

3 Q. And did the practice result in conflicts of programs and repeaters? A. It did.

Q. And those were recognized evils in the business at that time? A. They were.

Q. What were the monthly purchases of films by your exchange in December, 1908, prior to taking out a Patents Company license? A. December, 1908, we were purchasing on an average of about 30 reels a month.

Q. That would mean how much in dollars and cents? A. About \$3,000.

4 Q. You were familiar with the requirements in the Patents Company license to the effect that the exchange must lease a minimum of \$2,500 per month? A. Yes.

Q. Could an exchange conduct any kind of a business on less than that in 1909? A. No, sir, they could not.

Q. In point of fact, were there many exchanges, licensed exchanges, during the year 1908, that were purchasing less than that? A. Not regular exchanges. There might have been some distributing offices or sub-exchanges that were buying less.

Q. It is in evidence in this case that the by-laws of the Film Service Association required that the exchange pur-

chase at least \$1,200 per month of film. Do you recall that? 1
A. Yes, I do.

Q. Now, did you know who it was that made that provision in their by-laws? A. That was made by the Executive Committee, and approved by the members, themselves.

Q. Did the manufacturers have anything to do in the imposition of that requirement? A. No, sir, they did not.

Q. Do you recall when the release day rule first went into effect? A. I do not recall exactly the date; no, sir.

Q. The Edison Exchange license agreement required that film be returned after six months. Do you recall that? A. 2
I do.

Q. Do you know whether that was favored by the exchanges or not, at that time? A. I think it was.

Q. Did you favor it? A. I did.

Q. Why? A. For the simple reason that personally, so far as our company was concerned, we figured that we would have a sufficient amount of film by returning film as indicated, and it would also take off from the market, the old, worn out, scratched film; in other words, it would place us in a position to supply a cleaner program to a theatre, and in those days we were doing everything that we possibly could to assist the theatre to make a success and prolong the business. 3

Q. A similar provision was contained in the Patents Company license, wasn't it? A. Yes, sir.

Q. How much film did you have on hand at the time you signed the Patents Company license? A. I think we had about thirteen or fourteen hundred reels. When I say reels, I mean approximately, a thousand feet to a reel.

Q. What was the condition of that film? A. Some of it was very bad; practically useless.

Q. The film that you had on hand, as a rule, that you had acquired six months or more before, was that film of any value? A. Some of it was in very good condition, and subjects that were very good, but the majority of it really was not fit to be used. 4

Q. When did you commence to make returns of films under the Patents Company license, for the first time? A. I am not sure, but it seems to me that it was in the Fall of 1909.

Q. Were you required to make any return of film before you got a Patents Company license? A. No, sir.

1 Q. And when you first commenced to make returns, what films did you select for that purpose? A. We naturally selected the films that were damaged to such an extent that they were useless.

Q. In the meantime, you had been augmenting your supply right along? A. Yes, sir.

Q. At what rate? A. In 1909, I think we were buying about 50 or 60 reels a month.

2 Q. So that when you first commenced to make your returns, you had on hand a great deal more film than you had when you signed the Patents Company's license? A. Yes, sir.

Q. And you were at liberty to select out of that stock, the film that you regarded as of no further use? A. Yes, sir.

Q. And you retained the film that you thought could be used? A. Yes, sir.

3 Q. There has been some testimony in this case to the effect that this rule as to the return of film made it impossible for an exchange to accumulate a library of so-called educational and scientific subjects. Did it have any such effect as that? A. As far as we were concerned, we always had a sufficient amount of educational and scientific subjects to meet the demand which we had for it.

Q. What percentage of the total amount of film purchased or leased by you were of that character, educational and scientific? A. I would imagine, about 5 per cent.

4 Q. State to what extent you could have kept back your educational and scientific subjects? A. Well, we could retain a sufficient amount to meet any demand that we had. The demand in those days was very, very small. Practically the only demand that we would have, would be occasionally from some school or something of that kind, but we had very hard work in getting the theatre people themselves to accept those films.

Q. Did you find that the provision in the Patents Company's license that the film should be leased only, and not sold, prevented you from supplying your customers as fully as you had been theretofore supplying them, where you purchased the film? A. No, sir.

Q. Did you ever hear of any objection, at that time, about the provision for a lease instead of a sale, among any of the exchanges? A. No, sir. As I remember, the members

were all in favor of it, practically all of them. I never
heard any objection at all. 1

Q. Prior to 1908, was it the common practice for two
exchanges to be serving the same customer at the same
time? A. Yes, sir.

Q. It was done to a considerable extent? A. It was.
In our territory.

Q. Was that practice objectionable, or not? A. It was.

Q. In what respects and why? A. Well, it was injustice
to the exhibitor in the first place. Our exchange may book
a certain film, or subject, or program to its customers, for
a certain day, and the competitor of that customer would
ascertain that fact, and go to some other exchange to secure
that film before our customer, or *vice versa*, at any cost;
in other words, an exhibitor could not advertise the program,
in fact, they guarded their program. Did not want anybody
to know what they were going to have the next day, for
fear that other exhibitors would arrange to secure the same
program for that night. 2

Q. Was a licensed exchange at liberty to get its customers
wherever it could find them, in 1909 and 1910? A. Yes, sir.

Q. You were not circumscribed to any particular terri- 3
tory? A. No, sir.

Q. Although your license would be given for a particular
place? A. Yes, sir.

Q. During the year 1908, do you know whether or not
there was competition between the so-called Edison licensed
manufacturers and importers? A. There was.

Q. In what ways did they compete? A. They naturally
were competing as to quality and subjects, because it was
the better quality and subjects of films that would sell the
largest. And they also made it a practice of having solic-
itors. 4

Q. Did many of those solicitors come to you personally
and solicit your business? A. They did.

Q. Was that frequent? A. Yes, sir.

Q. In what other ways did you observe the competition?
A. Well, I don't know of any other particular way that I
could observe the competition. They naturally were trying
to make films so as to outsell their competitor.

Q. Do you know whether or not at that time they sent

1 out circulars of their films to your customers, the exhibitors?
A. Yes, sir, they did.

Q. To what extent? A. Well, to a very great extent. They made it a practice of sending their literature and giving the release date to practically all exhibitors.

Q. Did they send out advance notices of every release that they turned out? A. They did.

Q. Do you remember seeing their advertisement in the newspapers or papers devoted to the motion picture art?
A. Trade papers, yes, sir.

2 Q. Can you state whether or not that competition continued after the formation of the Motion Picture Patents Company? A. It did.

Q. And in what ways did you observe it? A. In practically the same way that it was before. Their advertisements continued to appear long before the release dates, and circulars and printed matter describing the various subjects were sent out before the release date, not only to the exchanges, but also to the exhibitors.

3 Q. You have stated that you sold your exchange business in 1910 to the General Film Company. Will you please state the circumstances leading up to that sale? A. I met Mr. George Kleine at lunch, one day, in Chicago, shortly after it was rumored that he had sold his exchanges to the General Film Company, and the matter was brought up, and I indicated interest in having a proposition, and we made an appointment for either the next day or the second day, I am not sure, after that—at 10 o'clock in the morning, at his office. And, on keeping that appointment, I was made a proposition, which I accepted.

4 Q. Did Mr. Kleine or anyone else connected with the General Film Company or anyone connected with the Patents Company, ever intimate to you that if you did not sell, your license might be cancelled?

Mr. GROSVENOR: Objected to as leading in form.

The Witness: No, sir, they did not.

By Mr. CALDWELL:

Q. Was any threat of that kind made by anybody at any time? A. No, sir, there was not.

Q. Was the sale voluntary? A. Yes, sir, it was.

Q. Did you know, at the time of the provision in the exchange license agreement that the Patents Company might cancel your exchange license without cause on fourteen days' notice? A. I did.

Q. Did that have any effect in determining you as to the question of selling—as to whether or not you would sell? A. It did not.

Q. Did you make any agreement with the General Film Company, express or implied, that you would not re-engage in the film business, the film exchange business? A. I did not.

Q. If you had decided to re-engage in the film business, was the supply of motion pictures turned out by the unlicensed manufacturers and importers sufficient in quantity and quality to enable you to successfully conduct an exchange business? A. I think there was.

Q. At what price did you sell? A. I received a little over \$65,000, all told.

Q. What was the condition of the exchange business in Chicago in the year 1910, prior to the time of your sale to the General Film Company? A. Well, the conditions were very unsatisfactory. We had very bad competition—keen competition.

Q. Do you know whether the exchanges in Chicago were making money in 1910? A. I have no way of knowing of any exchange, except our own.

Q. Had that been profitable for some time prior to the sale? A. It was not very profitable at the time of the sale.

Q. Do you know how many licensed exchanges there were in Chicago, in 1909? A. I should judge there was about 12 or 15.

Q. Do you know whether or not there were any unlicensed exchanges in January, 1909? A. I think they were all unlicensed until some time in January.

Q. Well, the licenses were signed, were they not, in January, 1909, to go into effect in February, 1909? A. Yes, sir.

Q. My question relates to the time when the other exchanges were licensed. Now, do you know whether or not there were any unlicensed exchanges, any exchanges that did not take out licenses from the Patents Company? A. Yes, sir, there were.

1 Q. Can you name them? A. The Anti-Trust Film Company.

Q. Did that company continue in business? A. It did.

Q. For how long? A. It is still in business, or, at least, it is operating under the name of the Anti-Trust Company, but I understand they have sold to the Universal Film.

Q. Did you know of Laemmle's Exchange? A. I did.

Q. That was licensed for a short period of time, wasn't it? A. Yes, sir.

Q. And did that continue in business as an unlicensed exchange? A. It did.

2 Q. Do you know whether or not that exchange conducted a successful business? A. The indications are that it has been successful.

Q. Is it still in existence? A. It is.

Q. What program is it handling now? A. The Universal.

Q. During the years 1909 and 1910, do you know to what extent exchanges operating in that territory owned or were interested in a string or circuit of theatres? A. There were some exchanges who were interested in theatres.

3 Q. Can you name any of them? A. The Standard Film Exchange, Mr. Hopp, had theatres in Moline, Rock Island and Davenport—I think, in Davenport.

Q. Do you know of any other exchanges, whether operating in Chicago territory, or elsewhere, that also owned theatres? A. I think the Swanson Company had theatres, in fact, I know they did.

Q. Do you know of any others? A. I don't happen to recall any others in Chicago.

4 Q. I asked you about Chicago or any other territory. A. I think Morton Cohen, of the Amalagamated Exchange, on the Coast, was operating a great many theatres, and also Bailey, of the Bailey Film Exchange, in Montana. Pierce, Josiah Pierce & Sons, of New Orleans.

Q. What was the name of their exchange? A. I don't recall just what name they did operate under. I think Pierce & Scheck, of Baltimore, also had theatres.

Q. Do you know a man by the name of Flintom? A. Yes, sir.

Q. What exchange was he connected with? A. He had the Yale Film Exchange, of Kansas City.

Q. Do you know whether that exchange owned theatres? A. They did. 1

Q. What was the name of the exchange that operated up in the Minneapolis territory? A. That was the Twin City Calcium Light & Film Company, I think they styled themselves. It was owned by Mr. Van Duzee.

Q. Did that exchange own theatres? A. Yes, sir. Mr. Van Duzee had several theatres.

Q. After that exchange sold to the General Film Company, did you have occasion to go up there as the representative of the General Film Company and investigate the conditions? A. I did. 2

Q. State what you found, with respect to the character of the service that had been supplied by that exchange to theatres that it owned. A. We found that Van Duzee's theatres were getting really the selection of the films that he was leasing, and was getting a newer age of service, in every way superior to the service that he was giving his competitors.

Q. Do you know whether or not complaints had been received by the General Film Company of that fact? A. Yes, sir, we had received complaints. 3

Q. After you sold your business to the General Film Company in 1910, you continued to manage the branch of the General Film Company which was conducted at the place where the Theatre Film Service Company had formerly done business? A. Yes, sir; I continued to manage that branch up until about the 1st of March, 1911.

Q. Did you raise the prices to the exhibitors? A. No, sir, we did not.

Q. Was that branch, about that time, consolidated with another branch of the General Film Company? A. Yes, sir; I think it was the last part of June or the first of July we consolidated— 4

Q. Of what year? A. 1910. We consolidated the Kleine Optical Company branch with the Theatre Film Service branch, and a short time after that, about 30 days, we also consolidated the Calumet Film Exchange, and then it was in March, 1911, we really had more business than we could properly take care of at that branch, and we created a new branch on Wabash Avenue, which we called the Wabash branch, and divided up the

1 business between these two branches, and then I managed the Wabash branch up until the time I was made special representative.

Q. When you undertook the management of the consolidated branch, did you find any disparity in the service between exhibitors who were paying the same price?

A. Yes, I did.

2 Q. Will you explain what that was? A. Why, we would find customers from one branch that would be paying thirty or thirty-five dollars a week for his service, that was getting a service that, from the point of age and quality, would equal the service that our original branch, the Theatre Film Service Company, had been supplying for perhaps fifty or sixty dollars, and we immediately arranged or set out to place all of these exhibitors paying the same amount of money on an equal basis.

Q. Do you mean equal as to character of service? A. And price. In other words, we would endeavor to arrange that all exhibitors paying forty or fifty dollars would receive practically the same class of service.

3 Q. Do your duties as special representative of the General Film Company require you to make frequent trips to the various branch offices of the General Film Company in the territory which you described a short time ago? A. Yes, sir.

Q. Are you brought in contact much with the exhibitors in that territory? A. Yes, sir.

4 Q. Is the practice universal in that territory to have a daily change of program, or, rather, some localities where the changes are very frequent? A. Why, there are some localities that change three or four times a week, but in the majority of the territory that I operate in, they change daily, but out through the Northwest, the Dakotas, Montana, and some places in Missouri, they change three times and four times a week.

Q. What competition does the General Film Company have in that territory? A. Well, they have the Mutual and the Universal, and the special feature companies.

Q. How do you find the competition with those companies? A. We find plenty of it. It is very keen.

Q. Do you meet much competition from the special feature film companies? A. We do.

Q. Are you prepared to state about what percentage, in point of revenue of the business in that territory, the special feature companies have? A. Well, I have estimated from my observation that they do from 12 to 15 per cent. of the total volume of business. 1

Q. And about how is the remainder divided? A. I take it that the General Film Company's business is about forty per cent.

Q. Forty per cent. of the whole? A. Forty per cent. of the balance. Possibly forty to forty-five.

Q. And the Universal and Mutual divide about 60 per cent. between them? A. Yes, sir. 2

Mr. GROSVENOR: I object to the latter question as leading in form, and I move to strike out the answer.

By Mr. CALDWELL:

Q. Between whom is the balance divided? A. Between the Universal and the Mutual.

Q. Do you find many towns in that territory where there are just three motion picture theatres? A. Yes, sir. 3

Q. And how is the business divided in towns of that character, as a rule? A. Well, to take it as an average, I would say it is pretty equally divided. There are some towns where there are three theatres where we will have two, where in other places, we will have one. Probably, taking it on a whole, we have a little less than half of the total business.

Q. Are there many towns in that territory where motion picture theatres are found, where the General Film Company has no customers? A. Yes, sir, there are.

Q. Do you know any exchanges that sold to the General Film Company, that afterwards continued in business supplying the unlicensed service? A. Yes, sir. 4

Q. Who are they? A. I think the Bailey Film Exchange, of Butte, Montana.

Q. Was that known as the Montana Film Exchange? A. The Montana Film Exchange, yes.

Q. And did that exchange have an office also in Spokane? A. Yes, sir, it did.

Q. Do you know whether any of them that sold to the

- 1 General Film Company afterwards continued in business as exhibitors? A. Yes, sir.

Q. Could you name any of those? A. Van Duzee, Minneapolis, and Bailey also, of Butte, Montana. I think Morton Cohen of the Amalgamated, Josiah Pierce & Sons of New Orleans, Pierce & Scheck of Baltimore, Frank Howard of Boston. I don't recall any others just now. I think Rowland and Clark also had some theatres.

- 2 ALBERT W. GOFF, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Goff, and in what business are you engaged? A. Cleveland, Ohio. Film renter for the General Film Company.

- Q. You are the manager of the branch office? A. Manager of the branch office at Cleveland, Ohio, sub-branch at
3 Columbus.

Q. And how long have you occupied that position? A. Practically two years.

Q. That would be since December, 1911? A. Yes, sir.

Q. And prior to that, in what business were you engaged? A. I was assistant manager in the same office.

Q. For how long have you been assistant? A. One year.

Q. That would bring you back to December of 1910? A. Yes, sir.

- Q. And prior to December, 1910, in what business were you engaged? A. I was manager of the Kleine Optical Com-
4 pany at Vancouver, in British Columbia.

Q. Was that also a film rental agency? A. Yes, sir.

Q. And how long have you been in the film rental business? A. Since the Spring of 1907.

Q. What is the territory served from the Cleveland branch of the General Film Company? A. Well, it would be practically northern Ohio, with the exception of Toledo and the surrounding territory.

Q. Do you go into New York State at all? A. No. The furthest in that direction we would go, would be Erie,

Pennsylvania. Of course, we counter-lap with Pittsburgh territory in the northwest of Pennsylvania. 1

Q. In the territory which you serve, are there many theatres that are served by other branches of the General Film Company? A. No, sir. We do not conflict with other territories.

Q. What competition have you in that territory? A. The Universal and the Mutual programs, and the various feature companies.

Q. Who handles the Universal program? A. The Victor Film Exchange.

Q. And who handles the Mutual program? A. Mutual Film Corporation. 2

Q. In that territory, do you come in competition with any other branch of the Mutual Company? A. They have distributing points at Toledo and also at Columbus.

Q. And does the Universal maintain a branch at any other point in that territory, than Cleveland? A. Columbus.

Q. You do not go as far as Toledo? A. No, sir.

Q. Is there an exchange located at Toledo handling the Universal program, that serves in your territory, at all? A. Yes. A sub-branch of the Universal Detroit office. 3

Q. How many feature film companies are operating in Cleveland? A. Possibly eight or ten, principal of which are the Famous Players and the Warner features.

Q. You mean to say that these eight or ten, all of them, have offices in Cleveland, for the regular transaction of business? A. Yes, sir.

Q. The principal ones, you say, are the Famous Players and the Warner Feature Company? A. And the Warner, yes, sir.

Q. Are there any others of importance? A. Well, there is the Star, and there is the International, and the Union, and various others. 4

Q. Do you know how many motion picture theatres there are in the territory which you have just described as being served from that branch? A. I would say a possible 475.

Q. How do you arrive at those figures? A. Figuring it out in the past for reasons of our own, in covering the

1 territory, and what we have to draw from—our business possibilities.

Q. What do you mean, “for reasons of your own?” A. Why, in figuring out the possibilities I have for securing additional business.

Q. Do you have one or more solicitors on the road in your territory? A. I have one at all times. Sometimes I put on a second one to fill in.

2 Q. Is it part of their business to report to you any new theatres that are going up in that territory? A. Yes, keep me advised of all conditions in the neighborhood, which would affect our individual business.

Q. And do they report to your office the names and extent of the business of your competitors? A. In a certain way, they give us a line on what they are doing, and the nature of their stuff, the grade, the price paid, and so forth, if we can get it.

Q. Now, in the total number of theatres in that district, that you state is 475, how many are served by the General Film Company branch from Cleveland? A. Two hundred twenty-five.

3 Q. Does that figure of 475 include any theatres in that territory that may be served by other branches of the General Film Company than your branch? A. No more than the natural conflicts. You see, at the edge of your given territory, where the other man’s territory begins—where the shipping facilities are better.

Mr. GROSVENOR: Does that number that you have given, include the theatres served by the sub-branch, of which you have charge, at Columbus?

4 The Witness: Yes, sir. That is, the theatres from which we have to draw. That is the possibilities of the territory for every person in the territory that is a film renter.

By Mr. CALDWELL:

Q. Do you know whether in that number of 475 are included theatres that are served by other branches of the General Film Company than your own, and its sub-branch? A. No.

Q. If there are any theatres included in that number that are so served by other branches of the General Film Company, do you know whether the number would be large or small? A. Very small. Very small, indeed.

Q. How small would you say? A. Well, not a possible ten.

Q. Then you are prepared to testify that, of the number 475, not exceeding ten may be served by other branches of the General Film Company, than your own? A. Yes, sir.

Q. Could you state about what percentage in volume of revenue of the business is done by the special feature companies in that territory? A. Nothing definite on account of not knowing where they put their service, that is, they will put their service in for one day only, and they are supplied by another exchange for the other six days in the week, or perhaps for the other five days, as the case may be.

Q. What does the Famous Players charge for their service in Cleveland? A. Perhaps fifty dollars. Thirty-five dollars for a day on a feature. The Knickerbocker Theatre in town, I understand, runs a feature for six days in a week for \$200, and the seventh day, they fill in with an outside program, other than the Famous Players.

Q. Do you know how many theatres are supplied in Cleveland with the program of the Famous Players? A. I could not say definitely, no. You understand, I could tell any one of our customers that is getting the Famous Players, but I could not tell you which of the Universal or Mutual is getting the program.

Q. Well, how many of your theatres in Cleveland are getting the Famous Players? A. Two.

Q. How many are getting the Warner? A. None, to the best of my knowledge and belief.

Q. How many are getting other special feature films from outside sources? A. I could not give you a definite answer on that. They fill in with them at odd times.

Q. How many theatres, motion picture theatres, are there in Cleveland? A. Between 130 and 140.

Q. And of that number, how many are served by the General Film Company? A. About 65.

Q. How many are there in Columbus? A. Possibly 45 to 50.

Q. And how many do you serve? A. About 20 or 22.

1 Q. How many are there in Fremont? A. Four or five.
Four.

Q. And how many do you serve? A. Two.

Q. How many in Sandusky? A. Five.

Q. How many do you serve? A. Two.

Q. How many in Akron? A. A possible 16 or 18.

Q. And how many do you serve? A. Seven, about.

Q. How many in Tiffin? A. Five.

Q. And how many of that number do you serve? A.
Three. One of them runs two days a week only.

2 Q. Do the cities that I have just named constitute all
of the larger cities in your territory? A. With the possible
exception of Youngstown. And Canton.

Q. What is the situation in Youngstown? A. About
the same as Akron. A possible 16 or 20 theatres, and we
have, maybe, 40 per cent.

Q. And in Canton, Ohio; what is the situation there?
A. Six theatres. We supply three. Possibly seven thea-
tres there. I believe there is a seventh theatre there.

3 Q. To what extent do the customers of your branch se-
lect their own programs? A. I don't just get your idea
when you say "select"; you understand we are dealing with
a limited commodity, and there ain't much selecting. For
instance, an exhibitor is running 35 reels, and your output is
50. There is only 15 left. He don't want certain reels, a
Melies, or something like that. These peculiarities in his
own particular neighborhood we respect so far as, having
only a limited commodity, so far as the certain pictures are
concerned.

Q. When a customer applies to you for service, does
he, or does he not, indicate to you the character of the
service that he wants? A. He does.

4 Q. And you give him what he wants? A. We are glad
to, within the limits of the business.

Q. Do you have a schedule of the service to your cus-
tomers? A. Do you mean a given schedule of prices?

Q. No, no. I mean a given schedule of pictures, based
on age. A. Yes.

Q. Do you find that the customers in your territory
prefer to have you make up a schedule in advance for
them? A. Yes, sir; that has been the past education.

Q. And do they know some time in advance just what

pictures they are going to get? A. Yes; we make them out a program a week, about, in advance. 1

Q. Does that give the specific picture they are going to receive, and its title? A. The nature of the picture and the manufacturer of it.

Q. And do you know whether or not the customer is advised in advance of the character of the picture, as to the subject of the story, and the scenes that are to be enacted, and so forth? A. You mean the class of the pictures? Yes.

Q. Aren't these pictures advertised by the producers in the papers devoted to the motion picture art, and do not those advertisements give an outline of the story? A. They give a synopsis. 2

Q. And are not these advertisements accompanied by cuts showing different scenes from the picture?

Mr. GROSVENOR: Objected to, as leading in form.

By Mr. CALDWELL:

Q. State what you know about that. A. In the manufacturer's advertisements, he will put in a cut of the picture. He will furnish the local newspapers with cuts, if they want them. He will furnish the exhibitors with cuts, if they want them. 3

Q. And how long in advance of the release day are those advertisements issued? A. For a period of about, I would say, roughly speaking, two weeks.

Q. Do you know whether it is the custom in your territory for the exhibitors to subscribe to these motion picture journals or papers? A. It is.

Q. So that any exhibitor knows, anywhere from 10 days to a month before he is to receive a given picture, just what the character of that picture is, doesn't he? A. It all depends on the grade of his order. The age of his order. Film service is graded according to the age of his order. 4

Q. Well, even if he is taking first-run pictures, he knows in advance just what the picture is, doesn't he? A. Yes, sir.

Q. Now, if he is dissatisfied with a picture for which he is scheduled, can he change it? A. Glad to change it, if

1 there is something available to take the place. There are some places where we cannot accommodate him, on account of a big cut-away. For instance, an exhibitor running 21 pictures, and the other 29; that takes all the output. You have nothing to change, unless you take away from one man to give it to another.

Q. Are you referring, now, to two exhibitors who are operating in the same neighborhood? A. Competitors.

2 Q. Have you found that this competition with the so-called independents, results in their getting many of your customers from time to time? A. Yes, there is a certain amount of them change each week.

Q. And you are getting a certain amount of customers that have been supplied by them? A. Yes, sir.

Q. What do those changes amount to in the course of a week? How many customers would you lose in a week in that way? A. Two to five. Six or seven. No given amount. Never more than eight or nine.

Q. And would you take on about that number of new customers per week? A. Yes, we have about an average.

3

STANLEY W. HATCH, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Hatch, and in what business are you engaged? A. Cincinnati, Ohio; and in the exchange end of the moving picture business.

4 Q. With what company are you connected? A. General Film Company, manager of the Cincinnati branch.

Q. And how long have you occupied that position? A. Since last April. The 10th of last April, at Cincinnati.

Q. Prior to that, what business were you in? A. I was branch manager of the branch office at Columbus, Ohio, of the General Film Company.

Q. And how long were you manager of the branch main-

tained at Columbus, Ohio? A. From the previous October until last April, that is, October, 1912, until April, 1913. 1

Q. Is that branch maintained now by the General Film Company at Columbus, Ohio? A. As a distributing office, only. It does not purchase any film.

Q. What office is it attached to? A. The Cleveland office.

Q. Prior to October, 1912, were you in the film rental business? A. Yes, sir, I was assistant to the manager in the Columbus branch.

Q. From what period? A. From December, 1911.

Q. What is the territory served by the Cincinnati branch of the General Film Company? A. The western part and the southern part of Ohio, a very small portion of the southeastern part of Indiana, the eastern half of Kentucky, the southern half of West Virginia, and a small portion of the western part of Virginia, and the northern part of Tennessee. 2

Q. What competition do you have in that territory? A. We have the Cincinnati-Buckeye Film Exchange at Cincinnati, handling the Universal program, the Mutual Film Corporation of Cincinnati, Warner's Features, the Famous Players, the World's Best Feature Film Company, I think the name is, a branch of the Universal at Toledo, Ohio, the Charlestown Film Exchange, I think it is, Charlestown, West Virginia, and a small exchange at Louisville, Kentucky, I don't know the name of it—and the Universal from Washington, D. C., into West Virginia. 3

Q. How many motion picture theatres are there in that territory that you serve? A. Five hundred seventy-five, exclusive of the Indiana, Tennessee and Virginia part of the territory.

Q. How did you arrive at the figure 575? A. We maintain a list that we keep corrected up to date, and as exact as possible. If a new house opens up, we add it on, if a house is dismantled, we take it off, and so forth. A sort of a card system. 4

Q. And have recorded on those cards every motion picture theatre in the territory? A. Yes, sir. As near as we can keep it up.

Q. Do you have on the road one or more solicitors soliciting business? A. Yes, sir. At different times.

1 Q. Is it part of his business to report to you theatres that are opening up? A. Why, only as a matter of record, that is all, yes.

Q. Now, then, of that number 575, how many customers are served from the Cincinnati branch of the General Film Company? A. Two hundred sixty-eight.

2 Q. Do you know whether in that number 575, any of the theatres are served by any other branches of the General Film Company, than your own? A. Not to my knowledge. I think not. That 575 does not include part of Indiana, Tennessee and a part of West Virginia, that is really territory belonging to other branches of the General Film Company, but on account of shipping facilities, we serve them.

Q. What is the extent of the business done in your territory by the feature film companies? A. Well, not very much. It is very little. I don't think that there are more than ten houses in the entire territory that use a feature program exclusively. The majority of the feature companies put them in irregularly, just at odd times, and have no fixed program.

3 Q. Are many of your customers served by the Famous Players Film Company? A. Only two that I know of.

Q. Many by the Warner? A. Quite a good many, yes, sir. At various times. Nearly all of them at one time or another.

Q. Which is the more active in your territory, the Famous Players or the Warner Feature Company? A. Well, they are both. One is about as active as the other, but the Warner does the most business.

4 Q. Which has been longer in the business? A. The Warner has maintained an office in Cincinnati for about two or three months, but they have always been in that territory since it started.

Q. Do you know when it started? A. No; they were there when I went to Cincinnati.

Q. All of these feature companies that you have just named, do they maintain offices in Cincinnati for the regular transaction of business? A. The Famous Players does not. It is handled from Pittsburgh. Warner's maintain an office in Cincinnati, and also the World's Best Film Company, I think the name is—they maintain an office in Cincinnati.

Q. How many theatres are there in Cincinnati with a seating capacity of 500 or over? A. Ten. 1

Q. Of that number how many are served by the General Film Company? A. Five.

Q. How large a place is Lexington, Kentucky? A. Lexington is thirty, thirty-five or forty thousand.

Q. How many motion picture theatres are there there? A. Seven altogether.

Q. And how many seating 500 or over? A. Three.

Q. And of that number, how many do you serve? A. One.

Q. How large a place is Dayton, Ohio? A. It has in the neighborhood of 100,000. 2

Q. How many theatres in that city seat 500 or over? A. Five.

Q. And of that number, how many do you serve? A. Two.

Q. Springfield, Ohio, how large a place is that? A. Around 30,000, I judge.

Q. How many theatres there seat 500 or over? A. Seven.

Q. And of that number, how many do you serve? A. Three.

Q. How large a place is Newark, Ohio? A. About forty thousand. 3

Q. And how many theatres in that city will seat 500 or over? A. Seven.

Q. And of that number, how many do you supply? A. Two. I am not sure as to the seating capacity of those houses. Some of them may not be 500. That is the entire number in the town.

Q. Do you do much business in West Virginia? A. We have about 30 or 40 accounts, I think, in West Virginia.

Q. They are mostly small towns? A. Very small towns. Mining towns. 4

Q. Well, in towns of that character, do you have as many theatres as the independents? A. It is about even, I should judge. They continually change from one to the other.

Q. Do you find any towns in your district where the unlicensed service is preferred to the licensed? A. No, I would not say so. It is pretty hard to tell what they prefer.

Q. Do you find any towns in your territory where there are one or more motion picture theatres and you are not supplying any customer? A. Yes, sir.

1 Q. Are there many such instances as that? A. Very few.

Q. What is your system of booking with customers? A. We use partially what is called a schedule system, whereby a customer receives the same reels the same day each week at a fixed age. We only use that system in a case of competing houses where we are supplying two houses in the same locality. All other houses, we use what we call the pick-up booking.

2 Q. What do you mean by that? A. Well, they select their program according to their own ideas or wishes, or to balance; for instance, give them a comedy, drama, and a Western each day, if possible. We find that is the most satisfactory way to book. But where there are competing houses, we use a schedule, so as to insure them each a division of equal makes.

Q. And in that way do you avoid conflicts of service? A. Yes, sir.

Q. And repeaters? A. Yes, sir.

Q. If a customer wants to change after he has received his notice of booking, do you find that you can accommodate him? A. As a rule, yes, sir.

3 Cross examination by Mr. GROSVENOR:

Q. Where you have two customers that are competing, you find it necessary to arrange the program for each of those customers by dividing the reels which you have, up among them? A. We find that is the most satisfactory way. It is most satisfactory to them. Most of them seem to desire that.

Q. And that is the way you do it? A. Yes, sir.

4 Q. Making the division in the manner that seems to you fair, having in mind the amounts paid by the two customers for their service? A. Well, the amount paid is for the age, not for the division of makes. The man that pays the most money will get a newer age, but he will not receive any more of one make than another, except where it is impossible to divide them evenly.

Q. You try to divide the different makes evenly, do you? A. Yes, sir; regardless of the price paid.

Q. Some customers would prefer to have most of their reels of a particular make, I presume? A. Yes, sir.

Q. These 268 theatres which you serve; nearly all have

a daily change of program, do they not? A. Practically all of them. Some of them only operate three days in the week; some, only two days in the week. But nearly all of them change every day, six or seven days a week. 1

Q. How many of those 268 theatres do change every day, would you say? A. I would say, 240 of them.

Q. This territory which you reach through your general agency includes many small farming communities, doesn't it? A. Yes; some very small towns. Especially in Kentucky.

Q. And in those small towns, the theatre is generally run only Saturday night or Sunday; isn't that the case? A. Well, very few. The majority of them run every night, or three nights a week. 2

Q. But there are some that run only one night a week? A. There are some, yes, sir.

Q. And there are quite a number that run only three nights a week? A. Yes, sir.

Q. Now, in forming your estimate of the number of theatres in your territory, you have termed, or considered, a theatre any house which shows moving pictures, whether that is open one night a week or three nights a week? A. Yes, sir. 3

Q. Or six nights a week? A. Yes, sir.

Q. The prices at which you sub-rent films are governed by the age of the film? A. Yes, sir.

Q. And are not determined by the make? A. No, sir.

Q. So that, if you have a reel from each of the nine manufacturers; that is, making nine reels, and they are all of the same age, you will sub-rent each of those reels at the same price? A. Yes, sir.

Q. In what way is the territory of your branch divided off from the territory of the nearest branch or the adjoining branches of the General Film Company? A. Well, according to the best way to ship to the town, the railroad connections, and so on. There are no distinct lines as to territory. When we are in doubt, we ask the other branch if they are supplying them; if they can ship them better than we can. If they can get in there quicker, we turn it over to the other branch. 4

Q. Do you have a certain defined territory marked out for you by the home office in New York? A. No, sir.

1 Q. Then you use your own judgment as to what theatres should be served from Cincinnati? A. Yes, sir.

Q. And what are the branches around your office that come around the outskirts of your territory? A. Indianapolis, Cleveland, Detroit, and Washington to a certain extent, in the southern part of West Virginia.

Q. Of course, there are on the outskirts or along the borders of your territory customers who may be supplied almost with the same facility by these other exchanges as by you? A. Yes, sir.

2 Q. Those theatres which you have included in this list of 575? A. No. The doubtful territory I left out is a part of Indiana, the western part of Virginia, and a very small portion of Tennessee. That is doubtful territory down there, and I do not include that in those figures.

Q. Then doubtful territory— A. Those figures are only theatres in Ohio, Kentucky and West Virginia, not Indiana, Tennessee or Virginia.

Q. Doesn't the General Film Company have a branch in Cleveland? A. Yes, sir.

3 Q. And also one in Columbus? A. That is a sub-branch, under the jurisdiction of the Cleveland office.

Q. Aren't there towns which may be served with about the same facility from Cincinnati as from Cleveland? A. Yes, a few.

Q. Then there are towns on the outskirts of your territory which are also on the outskirts of the Cleveland territory? A. Yes.

Q. Have you included such theatres in your list of 575? A. We included them in our list, if we were supplying the theatre in that town.

4 Q. Then you have only included towns in which you give service? A. No, if it is doubtful territory, or if it is on the edge of two territories, but we are supplying the town, say, with one house, and there were three houses in the town, we included those three houses in our list.

Q. Might one of the other theatres in that town be supplied by one of the other branches of the General Film Company? A. I don't think it could be, without our knowledge, because it would cause conflictions, and it would be natural for the manager of the other branch to ask us if we were supplying anybody there.

Q. Now, this card index that you maintain of the various theatres; what does that show respecting these different theatres? A. Just the name of the theatre and the town where it is located. 1

Q. And the seating capacity? A. In some of them it does, and in some it does not.

Q. And the number of days a week the theatre is open? A. No, it does not show that at all. Sometimes it is just the name of the theatre and the town. We have not been able to find out who owned it, even.

Q. You receive these films at Cincinnati through shipments made from the factories of the various licensed manufacturers? A. Yes, sir. 2

Q. Please name the cities and towns where are located the factories of the manufacturers from which the films are shipped to Cincinnati. A. They come from Chicago, Philadelphia and New York.

Q. Any other places? A. New York I am not quite sure of. Jersey City. I call it all New York.

Q. None of the shipments come from places in Ohio? A. Oh, no, sir.

Q. You ship them from Cincinnati to your customers, the exhibitors located in the States you have named? A. Yes, sir. 3

Q. And please repeat those States? A. Ohio, Kentucky, West Virginia, part of Indiana, Tennessee and Virginia.

Q. What per cent. of the gross weekly receipts of the branch of the General Film Company of which you have charge, consists of payments made by exhibitors for the rental of the films which you ship to them? A. All of it, with the exception of a very small per cent. for supplies, such as carbons and tickets.

Q. That does not amount to more than 5 per cent. of your receipts? A. Less than that. We sell very few supplies. 4

Q. About how many theatres were you supplying a year ago; that is, your branch? A. I was not in Cincinnati a year ago.

(For further cross examination see page 2450.)

- 1 RALPH LEBEAU, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. LeBeau, where do you live, and in what business are you? A. Milwaukee, Wisconsin.

Q. What business? A. Branch manager of the General Film Company at that point.

- 2 Q. And how long have you occupied that position? A. Since November 15th, 1913.

Q. Prior to that, what business were you in? A. I was connected with the Kansas City Feature Film Company, Kansas City.

Q. How long have you been in the film rental business? A. Since January, 1908.

Q. Do you know who owned the Kansas City Feature Film Company? A. Mr. A. D. Flintom.

- 3 Q. What is the territory served by the Milwaukee branch of the General Film Company? A. All the State of Wisconsin, except west of La Crosse, and the northern peninsula of Michigan.

Q. What branch serves the part of Wisconsin west of La Crosse? A. The Minneapolis branch.

Q. What competition have you in your territory? A. We have the Western Film Exchange at Milwaukee, handling the Mutual output, also the Milwaukee Film Exchange, handling the Universal output.

Q. Any other exchanges located in Milwaukee? A. None at all in Milwaukee.

- 4 Q. Are there any exchanges located elsewhere that compete with you in your territory? A. H. Davis at Watertown, Wisconsin, and the Grand Rapids Film Exchange at Grand Rapids, Michigan. Neither are buying exchanges.

Q. And what other exchanges? A. No others in the State.

Q. Are you in competition with the Famous Players Film Company? A. Yes, sir.

Q. What office or branch of that company? A. A concern in Minneapolis which handles Minnesota and Wisconsin.

Q. Are you in competition with the Warner Feature

Company? A. Yes, sir; they maintain a branch in Chicago in opposition to us, in competition with us. 1

Q. How do you find the competition from the special feature companies? A. The Warner Feature Film Company has no accounts using their service exclusively for any length of time in the State. They occasionally take on accounts for a few weeks, but not for an indefinite period. The Famous Players Company is fairly strong; their weekly rental I would estimate at about \$900 per week in the State.

Q. How many motion picture theatres are there in the territory which you have just described as being territory of the Milwaukee branch? A. About 290. 2

Q. And where do you get your information as to that number of theatres? A. We are able to tell, of course, from our own record, how many we are serving; also, the Western Film Exchange caused to be published in one of the daily papers in Milwaukee, a list of the theatres furnished by the Milwaukee branch of the Mutual Film Company, known as the Western Film Exchange. The number served by the Universal people, we are able to tell that from our own records that we keep of the number of theatres in the State, the service that they are using. 3

Q. Do you keep a card index system? A. Yes, sir, we do.

Q. Does that give the name of the location of every motion picture theatre in your territory? A. Yes, sir.

Q. And is that kept up to date? A. As far as possible, through our traveling representatives. We have a man in the office who makes trips out, and secures data for us in connection with visiting our trade and soliciting new business.

Q. Does he report to you the new theatres that are in process of construction? A. Yes, sir. 4

Q. Does he report to you theatres that are supplied by your competitors? A. Yes, sir.

Q. And in that way you are prepared to say that the number of motion picture theatres in that territory is about 290? A. That is reasonably correct.

Q. Of that number, how many are supplied by the General Film Company from the Milwaukee office? A. One hundred thirty-five.

Q. Do you know whether the figures 290 that you give as

1 approximately representing the total number of motion picture theatres includes any theatres that are served by other branches of the General Film Company than the Milwaukee branch? A. No, it does not.

Q. You know that those figures do not include— A. They did not.

Q. Do you know how many are served in that territory by the Mutual? A. One hundred and four, according to their printed list.

Q. Do you know how many are served by the Universal?

2 A. Twenty-seven, according to our records.

Q. And how many are served from miscellaneous sources? A. Does that include the Davis Film Exchange?

Q. Including the Davis? A. I should say twenty.

Q. Do you know the total number of motion picture theatres in the City of Milwaukee? A. Sixty.

Q. Of that number, how many are served by the General Film Company? A. Twenty-eight.

Q. Green Bay, Wisconsin, how large a city is that? A. About 25,000.

Q. What is the number of motion picture theatres there?

3 A. Five.

Q. How many does the General Film Company serve?

A. Two.

Q. Kenosha, Wisconsin; how large a city is that? A. About 30,000.

Q. How many motion picture theatres are there? A. Seven.

Q. How many does the General Film Company serve?

A. Four. Counting two from the Chicago office.

Q. Is that two included in your enumeration given above? A. In the one hundred and thirty-five?

4 Q. Yes. A. It is not.

Q. Is it included in the total number of theatres which you have stated to be two hundred and ninety in that district? A. It is.

Q. Sheboygan, that is in Wisconsin? A. Yes.

Q. How large a place is that? A. About 20,000.

Q. How many motion picture theatres are there? A. Four.

Q. And how many do you serve? A. Two.

Q. Racine, Wisconsin—how large a place is that? A. 1
About between twenty and twenty-five thousand.

Q. And how many motion picture theatres are there?
A. Five.

Q. And how many do you serve? A. Three.

Q. Beloit—how large a place is that? A. About 15,000.

Q. And how many motion picture theatres are there?
A. Four.

Q. And how many do you serve? A. Two.

Q. Appleton, Wisconsin? A. About 12,000.

Q. How many theatres? A. Four.

Q. And how many do you serve? A. Two. 2

Q. How many theatres are there in Milwaukee that will
seat five hundred or more? A. Twelve.

Q. And how many of those do you serve? A. Seven.

Q. Will you state, without my having to repeat the ques-
tion each time, the conditions with respect to the number
of theatres of that capacity and the number served by you
in the following cities—Green Bay? A. One.

Q. Who serves it? A. We serve it.

Q. Kenosha? A. Two.

Mr. GROSVENOR: Green Bay, there is one theatre 3
having five hundred or over, and you supply it?

The Witness: Yes.

By Mr. CALDWELL:

Q. And Kenosha? A. Two. We supply one.

Mr. GROSVENOR: Does the other branch of the
General Film Company supply the other?

The Witness: No. It is an independent theatre—using 4
independent service.

By Mr. CALDWELL:

Q. Sheboygan? A. One. We supply that one.

Q. Racine? A. One. We supply that one.

Q. Are those the only theatres in your territory with a
seating capacity of five hundred or more? A. Those are the
only ones. I have enumerated all of them.

- 1 Q. What is the practice in your branch as to supplying your customers with service, booking, and so forth?
- A. In regard to booking, the theatres that are located in Milwaukee and the towns which are so close to Milwaukee that the exhibitors come in daily and get their films, those exhibitors book their own programs. We use the open booking system, where the booking is open to the exhibitor; they come in and sit down and select their own programs. In the outlying towns, that are shipped by express or other means, we handle the booking ourselves, make out the programs in advance, mail them out, and the exhibitor looks
- 2 them over. If he has any criticism to make, he writes or wires us, or phones us for changes, sends in a list of reels he would like to be put in in place of the others. Where it is possible, that is done. If we are not able to do it, we put those down the next week, when the booking is made up.
- Q. As a rule, then, do you find that you can comply with the wishes of your customers in that respect? A. With all reasonable demands we gladly comply.
- Q. Just how active is the competition there between you
- 3 and your competitors? What do you do to get business from them, and what do they do to get business from you?
- A. We have a man in our office who makes trips out. He is not on the road all the time, but he goes out from time to time and solicits business. He goes to the houses and explains the merit of our service and endeavors to take on the business. The Mutual Film Exchange has a man out on the road all the time, visiting the trade. They are very active in the territory. The Universal has a representative who is out part of the time only, soliciting business.
- 4 Q. Is there a constant switching back and forth of customers between you? A. Yes; I should say six to ten changes every week each way.

Cross examination by Mr. GROSVENOR:

Q. Mr. Le Beau, you have 135 theatres in your territory? A. We are supplying 135 theatres.

Q. Do most all of those theatres take a daily change of program? A. With only one exception.

Q. And 134 of the 135 theatres change their programs daily? A. I will qualify that by saying that those shows which only run three nights per week would use only three changes, but where they run six nights a week, they change every day, with one exception.

Q. How many of these 135 theatres run only three nights a week? A. Approximately only twenty.

Q. Then, of your 135 theatres, about a one hundred and fifteen change every day? A. Yes, sir.

Q. And twenty change three times a week? A. Well, one to two to three days per week. If they only run three days or two days, they only change twice or three times.

Q. How many of those twenty run only one night a week? A. I should say, five.

Q. Your territory; that is, the territory of your branch, embraces a country that is largely agricultural? A. I should say, equally divided. There is a great deal of manufacturing throughout the State, as well as agriculture.

Q. It includes many very small towns, doesn't it? A. Yes, sir.

Q. In those small towns, the theatre will be open only on one night or two nights of the week? A. That is true.

Q. You have included in this number, 290 theatres, all such places? A. I have.

Q. Are there any theatres in Milwaukee which are open only one night a week? A. There are none.

Q. How do you divide off the territory belonging to your general agency from the territory belonging to the other branches adjoining your branch of the general agency? A. That division is determined almost entirely by the shipping facilities.

Q. Then there are towns that lie halfway between two general agencies or two branches? A. I could hardly say that, because there are certain railroads that run out of adjoining cities—cities where there are adjoining branches which can be reached much easier.

Q. I should have said, perhaps, there are towns which have practically the same shipping facilities as regards your branch and another branch? A. There are.

Q. For instance, you have named the town of Kenosha,

1 where two theatres are served by you and two are served from Chicago? A. That is true.

Q. How do you make up your 290 theatres in such a case? Have you included in your 290 theatres all theatres which are served more easily by you than by any other branch, and also theatres which may be served with equal facility by a couple of branches? A. I have included in that list all towns in which we are operating at the present time, and in which another branch is operating at this time, also.

2 Q. You have included, then, all theatres which you think you can supply as well as any other branch? A. No; there are a few towns which are served out of Chicago which could possibly be served to better advantage at Milwaukee, but by preference of the customer, they are retained at Chicago and still shipped from Chicago.

Q. And those you have not included in your 290? A. No, I have not.

Q. But you have included in the 290 some theatres that can be served with the same facility by another branch? A. Yes. Kenosha, for instance, of which that is true.

3 Q. In your figure 135, being the theatres served by your branch, you have included only theatres served by your branch of the General Film Company? A. That is true.

Q. Are there any other theatres besides these two in Kenosha that are served by other branches of the General Film Company in your territory? A. I spoke of a few, yes. There are five. That is all.

4 Q. When there are two customers that are competitors having theatres close to each other, how do you divide the program between them, or do you divide the program between them? A. We do in certain cases. In case the exhibitors are using the same grade of service, they are put on what is termed a split, the output is split between them, divided equally as to makes, and one week one gets the split No. 1, one division; and the next week, his opponent gets it—his competitor gets it. In that way, they each get a fair division of the entire output. Where they do not pay the same price, they are handled on the open booking system, and the highest-priced man, the highest-paying man, gets the first choice.

Q. And, when they pay the same price, you divide according to the makes? A. According to the releases. 1

Q. And you charge the exhibitor by age and not according to the maker? A. That is true.

Q. So that, if you have five reels of different makes that are all the same age, you charge the same sub-renting price for each? A. That is true.

Q. How do you get these films at Milwaukee? A. They are shipped to us from the manufacturers.

Q. And where are the factories or the places from which they are shipped to you? A. Chicago, Philadelphia and New York. 2

Q. There are not any points in Wisconsin from which they are shipped to you? A. None.

Q. And then you ship them to your customers located in what states? A. Wisconsin and upper Michigan.

Q. And what per cent. of your weekly gross receipts is made up of the rentals paid you by your exhibitors? A. Approximately 95 per cent.

(For further cross examination see page 2460.)

Whereupon, at 4:45 P. M., on this Tuesday, the 9th day of December, 1913, the hearings are adjourned until 10:30 o'clock on Wednesday, December 10th, 1913, at the Hotel Manhattan, New York City. 3

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, December 10, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 10, 1913, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America and Albert E. Smith.

Thereupon, CALVIN S. EDWARDS, the next witness 1
produced by the defendants, of lawful age, being first duly
sworn by the Examiner, deposes as follows:

Direct examination by Mr. CALDWELL:

Q. Mr. Edwards, where do you live, and in what business are you engaged? A. I live in Kansas City, Missouri. Branch manager of the Kansas City Branch of the General Film Company.

Q. How long have you occupied that position? A. Since the 10th day of November, 1913. 2

Q. And before that, in what business were you engaged? A. In the same business, as assistant manager.

Q. And from what time were you the assistant manager of that branch? A. I was the assistant manager of the Yale Film Company, and then, of the General Film Company, from the latter part of 1907.

Q. Then, from the latter part of 1907, up to the time of the sale of the business of the Yale Film Exchange to the General Film Company, you were the assistant manager of the Yale Film Exchange? A. Yes, sir.

Q. And when was that sale? A. In October, 1910. 3

Q. Were you in the film business, or motion picture business, prior to 1907? A. Never saw a motion picture prior to that time.

Q. Your first experience commenced with the Yale Film Exchange? A. It did.

Q. Now, what is the territory at present served from the Kansas City branch of the General Film Company? A. The western half of Missouri, and all of the State of Kansas, and we have two customers in Oklahoma, and two in the State of Iowa.

Q. What competitors have you in that territory? A. The Mutual Film Corporation, of Kansas City; the Universal Film & Supply Company, of Kansas City, Kansas City branch; J. W. Morgan Film Service Company; and the Navaho Film Exchange. 4

Q. And where is it located? A. These are all in Kansas City. The Star Machine and Supply Company—I believe it is the Star Film Machine and Supply Company, of St. Joseph, Missouri; the Wichita Film & Supply Company of Witchita, Kansas. The Rite Service Film Com-

1 pany of Wichita. The Mutual Film Corporation of Denver. The Famous Players Feature Film Company of Kansas City, also of St. Louis, and the St. Louis office, has the State of Missouri, and the Kansas City office has the State of Kansas. The Warner Feature Film Company of Kansas City, the Kansas City branch, the World Feature Film Company, the American Feature Film Company, the Kansas City Feature Film Company, the Monarch—I am not sure whether they call this the Monarch Feature Film Company, or whether it is just the Monarch Film Exchange.

2 Q. Do you know who owns the Kansas City Feature Film Company, and the Monarch Feature Film Company?
A. The Kansas City Feature Film Company and the Monarch Feature Film Company are owned by Mr. A. D. Flinton.

Q. How long have they been in operation in Kansas City? A. Well, I can't state as to the time.

Q. Well, approximately? A. I can't tell you that. It was at the time when Mr. Flinton severed his connection with the General Film Company.

3 Q. What is the extent of your competition with these special feature film companies? A. They are making inroads into our business very rapidly.

Q. Well, please describe the way in which they are making inroads into your business? A. We have quite a number of customers in Kansas City who get their film from the General Film Company, and at the same time are using the Famous Players features one day in the week, or two days in the week.

4 Q. Does that condition hold good with reference to the other feature film companies there? A. The Warner Feature Film Company is doing quite a little business in that territory. The others, I know very little about.

Q. Are the others from time to time supplying your customers with special feature films? A. I have no knowledge of any case where they have.

Q. When one of your customers is supplied on one or more days in the week with the service of the Famous Players Company, or the Warner Feature Company, does that displace to that extent, your service? A. No, sir.

Q. Mr. Edwards, will you just explain how the business

is worked. When one of your customers is supplied with a part of its program by the Warner's, or the Famous Player's features, or by any of the other special feature film companies? A. They take out their program, just the same as if these other people were not on earth, so far as we are concerned.

Q. And do you know about what percentage of the business in total value the special feature companies have in your territory? A. Only in a general way.

Q. Well, what percentage would you say?

Mr. GROSVENOR: I object to the witness stating any percentage, his knowledge, as he has testified, being only a very general one.

By Mr. CALDWELL:

Q. Is the knowledge you have sufficient to enable you to state the percentage of business done by the special feature companies? A. There are in the territory we serve approximately eleven thousand dollars being taken out of that territory by our various competitors, in addition to the General Film Company's receipts.

Mr. GROSVENOR: Eleven thousand dollars per week?

The Witness: Yes.

By Mr. CALDWELL:

Q. How much business does the General Film Company do in that territory? A. The General Film Company does at present, about seventy-seven hundred dollars worth of business per week.

Mr. GROSVENOR: How do you arrive at that estimate of eleven thousand dollars?

The Witness: In talking with the manager of the Mutual Film Exchange, a few days ago, he told me he was doing about three thousand dollars worth of business in the Kansas City territory. At a meeting a short time ago with the

- 1 Mutual manager and the Universal manager, the Universal manager let fall the fact that he was doing about twenty-seven hundred dollars worth of business in that territory—

Mr. GROSVENOR: Making the business for those two companies of how much?

The Witness: That would amount to fifty-seven hundred dollars.

- 2 Mr. GROSVENOR: And in your own judgment and belief the specials are doing then fifty-three hundred dollars worth of business?

The Witness: No, sir.

Mr. CALDWELL: I object to that, that is putting something in the mouth of the witness which he has not stated.

By Mr. CALDWELL:

- 3 Q. State how you arrived at the other figures, Mr. Edwards? A. From a gentleman in Kansas City, who is an expert accountant, and who wanders around among the different exchanges and companies, and he informed me—

Mr. GROSVENOR: I object to that, and move to strike out all the testimony of the witness up to the present, he having now shown it is only hearsay and information heretofore gathered from others.

Mr. CALDWELL: I insist the answer is entirely responsive to the question, put in response—

- 4 Mr. GROSVENOR: He shows the answer is based on improper information—

Mr. CALDWELL: We insist that the answer is perfectly responsive to the question asked by the counsel for the petitioner, and when he finds out that the character of the testimony is not what he expected, he wants to shut it out.

Mr. GROSVENOR: I move to strike out the testimony of this witness that the total business done in his territory outside of the General Film Company's,

amounted to eleven thousand dollars a week, this witness having been shown by cross examination to have no sufficient knowledge to warrant the giving of mere opinion evidence, and he has now testified that the source of his information is hearsay. 1

The Witness: This gentleman informed me that outside of the General Film Company's business there were eleven thousand dollars worth of business being handled in that territory. The Mutual and the Universal are, I presume, handling the amount that their managers informed me they were.

By Mr. CALDWELL: 2

Q. And who do you say was the gentleman who gave you the information with respect to the other companies? A. His name was Mos.

Q. And who was he? A. He is an expert accountant, as I understand, in Kansas City, that makes a business of going around among the exchanges and offering his service as an expert accountant.

Q. Mr. Edwards, how many theatres are there in the territory served by you, motion picture theatres, I mean? A. In the territory served by the Kansas City branch? 3

Q. Yes. A. There are five hundred and thirty-five theatres.

Q. How did you arrive at that figure? A. From our office records and the card index.

Q. And what do you do in your office to insure the accuracy of those reports? A. When our travelling man is on the road he carries with him cards that he fills out on every town he visits, giving the number of theatres there, who they are operated by, their prices of admission, the machine they are using, and what exchanges are serving them with their pictures, and, if possible, he ascertains the prices they are paying. That card is mailed in by the travelling man from the towns that he visits. 4

Q. Does he make it a business to report the new motion picture theatres in process of construction? A. If he learns of them, yes, sir.

Q. In the event of the closing of a motion picture theatre, is that fact reported and noted on the records? A. If we learn of it.

Q. Of this number of theatres, 535, how many are served by the Kansas City branch of the General Film Company at the present time? A. Two hundred and forty-six.

1 Q. Now, of that number, 535, are there any theatres served by the other branches of the General Film Company? A. Approximately six.

Q. Do you know how many theatres in that territory are served by the Mutual program? A. Our records show one hundred and thirteen.

Q. And how many are served by the Universal program? A. Seventy-eight.

2 Q. Do you know how many towns there are in that territory where one or more motion picture theatres are located in which the General Film Company has no customer? A. There were one hundred and thirty-five towns in that territory in which there are no picture shows in which the General Film Company's pictures are shown.

Q. And by the use of the words "in which the General Film Company's pictures are not shown" you mean where the General Film Company has no customer, do you not? A. That is what I mean.

Q. Do you know how many motion picture theatres there are in Kansas City? A. One hundred and one.

3 Q. And how many of those theatres are supplied by the General Film Company? A. Forty-four.

Q. How large a city is St. Joseph, Missouri? A. About 75,000.

Q. How many motion picture theatres are located in that city? A. Eleven.

Q. And of that number how many are served by the General Film Company? A. Seven.

Q. Wichita, Kansas, how large a place is that? A. Fifty thousand.

Q. How many motion picture theatres are there? A. Six.

4 Q. And how many of those six are served by the General Film Company? A. Three.

Q. Topeka, Kansas, how large a place is that? A. About 40,000.

Q. How many motion picture theatres are there? A. Eight.

Q. And how many of those eight are served by the General Film Company? A. Four.

Q. Mr. Edwards, will you state the character of the competition between the General Film Company and the Universal and Mutual companies in that territory? How active is it? What do you do to get business, and what do they do

to get business? A. We have one traveling man on the road. If we learn of a new prospect we write a letter, send a catalogue of machines, and invite the prospective customer to come to Kansas City. If he does not come we tell him we will send a representative there to see him. We only maintain one traveling man. We do quite a little business through correspondence.

Q. Do you know what methods are resorted to by your competitors to get business? A. We hear from our traveling men that they are being followed up closely by the Mutual and Universal representatives, and that they find them in almost every town that they go to.

Q. Do they get many of your customers? A. Occasionally one.

Q. Do you get any of theirs? A. Occasionally.

Q. Could you say how many customers on an average per week discontinue the General Film Service and take on either the Mutual, or the Universal service? A. Not to a certainty.

Q. Are those changes frequent? A. Every week we have some, I can't say how many.

Q. Then every week you have some customers who leave you and go either to the Mutual, or to the Universal, is that right? A. Yes, sir.

Q. Then every week you have some customers who have been served, or who are being served by the Universal and the Mutual who come to you, is that correct? A. That is correct.

Q. But you are unable to state the average number of changes of that character per week? A. I could not say.

Q. I think you have stated that in 1910 you were the assistant manager of the Yale Film Exchange at Kansas City? A. I was.

Q. And you occupied that position at the time that it sold its business to the General Film Company? A. Yes, sir.

Q. Did the General Film Company raise the prices to the exhibitors after it acquired the business of the Yale Film Exchange? A. No, sir.

Q. Do you know the average price per customer charged by the Yale Film Exchange during the year 1910, and up to the time it sold out to the General Film Company? A. Approximately forty dollars to a customer.

Q. Did the General Film Company reduce the prices after it acquired the business of the Yale Film Company in 1910? A. I don't think they did.

1 Q. Well, what is the average price that you charge at the present time per customer? A. The average price we charge, or that we get?

Q. The average price that you get? A. Our customers at the present time average about thirty-one dollars each.

Q. So the prices to the customer, average prices, are less than they were in 1910? A. From the Kansas City branch.

Q. What is the practice in your territory as to the character and change of service? Do most of the theatres have a daily change? A. Most of them have a daily change, yes, sir.

2 Q. How many reels to a program? A. Three, and four, and five.

Q. What was the number of reels per program in 1910, prior to the sale to the General Film Company? A. Three reels daily.

Q. That was the average? A. Yes, sir.

Q. At that time was it customary for many of your customers to take four and five reels a day? A. No.

3 Q. So that in 1910 the exhibitor was getting three reels a day, and paying forty dolalrs a week for the service, and now the same exhibitor is getting from three to five reels a day, and he is paying thirty-two dollars for it, is that correct? A. That is the average, thirty-one dollars.

Q. Can you state whether or not the pictures served by the General Film Company today are an improvement over those served in 1910? A. Only through the complaints we have had.

Q. Well, you see the pictures that are served now, don't you? A. Some of them.

Q. Many of them, do you not? A. Yes, sir, quite a number.

4 Q. You saw them in 1910? A. I did.

Q. Are the pictures the same in quality of photography, and the acting, and in other respects now that they were in 1910, or has there been an improvement in those respects? A. The improvement has been very marked.

Q. To what extent in your territory is the exhibitor at liberty to select his program of pictures? A. Our first, second, and third run customers select their own programs. Our entire number of reels that we lease we let out to certain customers, and they get together and rearrange their

own programs, and bring it in to us, and we book it to them in that way. 1

Q. Then the program is arranged among the exhibitors themselves? A. For the first, second, and third runs.

Q. That is the most expensive service, is it not? A. Yes, sir.

Q. Then, as to the balance of your customers, how is their program made up? A. An exhibitor using eighteen reels, I tell him to make a selection of twenty-five or twenty-eight reels, and submit it to us each week, two weeks in advance of the program, and we would select his program from those twenty-five or twenty-eight reels, giving him the opportunity of stating how many of the fifty reels he would like to have his program made up from. 2

Q. As a general rule do you comply with his requests as to selection? A. Always, if possible.

Q. Does it often happen that you do not do it? A. We sometimes have to ask the exhibitor to substitute three or four reels in order to make up his program. In other words, we can't get him a full program out of the list he submits owing to having so many customers that ask for the same reels. 3

Q. Are you referring now to the service of the same reels on the same day, is that what you meant? A. I mean during a week. We give him a program a week in advance. We make up a man's program a week in advance, and mail it to him, or send it to him, if he is in the city.

Q. Explain the reason why you can't give it to him on the particular day that he wants it? A. They do not specify the particular day that they want it. They want it during the week. Now, we have a great number of customers, you know, to provide for, and if you had twenty-five customers and they all sent in the same list, you could not well give the same films to the whole, or all, of the twenty-five, and for that reason we occasionally have to ask them to substitute some other releases in order to fill out their program. 4

Q. Now, if a picture is selected for any given week by a customer which he is unable to obtain that week, and it is not exhibited in his town or neighborhood that week, is that customer willing to take for another week the same picture? A. It depends entirely how early he could get it.

Q. Do you have any complaints from customers on the

1 score of being unable to get what they want? A. Very little.

Q. Have you found that your customers of that class prefer that you make up a schedule or program for them— A. No, sir.

Q. On a basis of the number they send to you? A. No, sir.

Q. Well, what do they prefer? A. Possibly I didn't get your question right before that.

2 Q. I asked you if you found that your customers of the class which you have just described, those taking other than the first, second, and third runs, prefer that you make up their schedule for them by selecting their pictures, a list of which they send? A. Yes, sir, that is the way they want it.

Q. Or would they prefer every week to go into your office and look over your list, and make a selection for themselves? A. We mail a list each week, a printed list, to every exhibitor, showing the releases of the subsequent week, and they have them before them all the time and they can make a selection from that list which we mail them.

Q. And they do that? A. They do it in the majority of instances.

3 Cross examination by Mr. GROSVENOR:

Q. Mr. Edwards, how is the territory which makes up your branch, or the territory over which you have jurisdiction, how is that territory assigned to you? A. It is not assigned to us at all.

Q. Do you get any instructions from New York as to the territory in which you shall do business? A. I never have had a word of instructions.

4 Q. Do you have any arrangement with the neighboring branches of the General Film Company as to what territory each of you shall do business in? A. Only in a general way.

Q. I suppose there is a territory bordering your district which is also reached by the other General Film Company's agencies? A. All around us.

Q. If there is a theatre on the border of your district, and also on the border of the neighboring district, and that theatre is served by neither you nor the adjoining branch of the General Film Company, don't each of your branches try to get that theatre? A. If we learn of it. That is, the Kansas

City branch does. I don't know anything about the other branch. 1

Q. Please look at this map which I show you and state the territory which is embraced in your district?

Mr. CALDWELL: I would like to have it stated on the record, what the map is, and have it marked for identification.

The Witness: We take in the entire State of Kansas, and go to Mobley. 2

By Mr. GROSVENOR:

Q. In Missouri? A. Yes, sir.

Q. Then you go as far east as Mobley? A. Yes, sir, as far east in Missouri, as Mobley.

Q. How far south do you go? A. We draw a line north and south, through Missouri.

Q. Yes, but that gives your eastern limit. Now, what is your southern limit? A. The State.

Q. Look at the map and state it on the record, Mr. Edwards? Try and concentrate your attention on this matter. Give the borders of your general agency? A. All of the State of Kansas, eastern Missouri, to Mobley. 3

Q. You mean western Missouri, to Mobley? A. East from Kansas City.

Q. Which makes the western part of Missouri as far east as Mobley? A. Yes, sir. To the southern boundary of Kansas, the southern boundary of Missouri, the northern boundary of Missouri, and the northern boundary of Kansas.

Q. Now, witness, look at this map and state what is the debatable ground around your general agency, that is to say, what is the territory that is just as well reached by the other agencies? A. Any of this territory could be reached by any of the General Film Company's offices throughout the United States, if they wanted to come in there. 4

Q. Now, witness, you testified on cross examination that all around the borders of your agency there are theatres which may be reached by the adjoining general agency, isn't that right? A. Yes.

Q. Please mark out the limits on this map of the territory

- 1 within your general agency which is just as easily reached by the adjoining general agencies? A. They could reach all of the territory.

Mr. CALDWELL: I object to that. The witness has not stated that that same territory could be just as effectively reached, as I recall it, in his direct examination, I object to the form of the question.

By Mr. GROSVENOR:

- 2 Q. Well, witness, I go back. You testified, did you not, and if I am wrong, correct me, that all around the borders of your district, or general agency, there are theatres which may be reached by some one of the other branches of the General Film Company? A. They could be reached, yes, sir.

Q. And you testified that when there are such theatres which are not supplied by the other branch of the General Film Company you try to get their business? A. Yes, sir.

Q. And similarly, the other branch of the General Film Company tries to get the same business of that theatre? A. That I can't answer.

- 3 Q. If you can't get it? A. That I can't answer.

Q. Please look at this map, and state the limits of this territory which can be reached just as well by the other general agencies, the near ones?

Mr. CALDWELL: That question is objected to on the ground that the witness has already delineated his territory on this particular map, and the question is therefore answered by a mere inspection of the map itself.

- 4 By Mr. GROSVENOR:

Q. Do you understand the question? A. I understand the question, but there should be an explanation in regard to that. So as to determine what territory the Kansas City manager thinks in his judgment is to the best interests of the exhibitor to go into. When I get an inquiry from an exhibitor, about the first thing I do is to figure up the expense. If the expense is less, from another branch, than it is from the Kansas City branch, I refer him to the other branch. If it is not, I go after the business.

Q. If it is about the same, you try and get the business? A. If it is about the same, yes, sir. 1

Q. Now, can't you mark or indicate on this map the territory which is part of your general agency, which can be reached just as easily, or about as easily from the neighboring general agencies?

Mr. CALDWELL: That question is objected to on the ground that the witness has stated that it is a question of express charges, and in no possible way could he determine from an inspection of that map alone what the express charges would be. 2

Mr. GROSVENOR: Read the question.

The Examiner repeats the question as follows:

"Q. Now, can't you mark or indicate on this map the territory which is part of your general agency, which can be reached just as easily, or about as easily from the neighboring general agencies?"

The Witness: No, I would not be able to mark on the map just what they are, without having the express charges here, and know what they are. 3

By Mr. GROSVENOR:

Q. I am not asking you anything about express charges, Mr. Witness. I am asking you to mark out this part of your district; that is, the outlying parts of your district which are reached just as easily from another agency as from your own. Do you understand the question? A. Yes, certainly.

Mr. CALDWELL: And I object to the question, on the ground already stated. The witness has said that it is a question of express rates, and facility of railroad transportation, matters which are not shown or disclosed by that map. 4

By Mr. GROSVENOR:

Q. Witness, what are the general agencies which surround your agency; that is, Kansas City? Name the gen-

1 eral agencies which come within touch of you. A. General Film Company, of Denver.

Q. Just give the names of the cities. I am asking you only for branches of the General Film Company. A. Denver, Omaha, St. Louis, Oklahoma City.

Q. Please look at this map and state what towns lie about evenly between Omaha and Kansas City, so that they may be reached by either.

2 Mr. KINGSLEY: I object to that, on the ground that the map speaks for itself; that the conclusion which he is asked to draw is beyond his competency, as he does not know the train schedules, and the rates from the various agencies.

By Mr. GROSVENOR:

Q. I am not asking you about express rates. I am trying for you to give me the part of those States which may be reached as easily from one General agency as from the other; that is, from Omaha as from Kansas City?

3 Mr. CALDWELL: I object to the question in the use of the words "as easily from one agency as another," because the witness has repeatedly stated that the facility for service depends upon the express charges and railroad transportation and train schedules, all of which matters are not disclosed by that map, and I direct the witness that he need not undertake any further description of that area in answer to this particular question.

Mr. GROSVENOR: Now, read the question, please.

The Examiner repeats the question as follows:

4 "Q. I am not asking you about express rates. I am trying for you to give me the part of those States which may be reached as easily from one General agency as from the other; that is, from Omaha as from Kansas City."

The Witness: I would not undertake to say, without having an official guide and studying the trains, and so on, and see what could be reached from there better than they could be reached from Kansas City.

By Mr. GROSVENOR:

1

Q. Can you state, witness, in what territory the theatres are located which you circularize; that is, whose trade you endeavor to get? A. In the district that I described a few minutes ago, or mentioned a few minutes ago.

Q. How do you happen to have some theatres in Iowa which are not in the territory which you name? A. We have three customers on a circuit which we have been furnishing for years.

Q. Where are they located? A. One at Hannibal, Missouri; one at Fort Madison, Iowa, and one at Keokuk, Iowa. 2

Q. These 535 theatres that you name as being within your territory are where located? A. In the State of Kansas, and the western half of Missouri.

Q. Aren't some of them located in Iowa? A. Not in the 535, no, sir.

Q. Are any of them located in Kansas? A. Yes.

Q. Are any of them located in Oklahoma? A. Two. Not in the 535, no, sir.

Q. Are any of them located in Nebraska? A. No, sir. 3

Q. All these theatres which you serve, being 246, have a daily change of program? A. Not all of them.

Q. How many of them do? A. There is approximately seven that do not.

Q. And what service do they take? These seven that do not take a daily service, how often do they change? A. Some three times a week and some four.

Q. In this district of yours; that is, in Kansas and western Missouri, there are located a great many very small country towns, are there not? A. A large number.

Q. And isn't it the fact that there are in those country towns many so-called store shows or small places which will exhibit moving pictures once a week? A. Yes, there are some of them. 4

Q. Well, there are a lot of them, aren't there? A. Well, I should judge there were quite a few of them.

Q. You have included within your 535 theatres, all places which exhibit motion pictures? A. That we have a knowledge of.

Q. And you have included in that list, all such places

1 which you have a knowledge of in these towns which show pictures once a week? A. Yes, sir.

Q. On direct examination you stated that there are 135 towns where the General Film Company has no customer. Is it not the fact that those are practically all small towns where the motion picture theatre will show pictures only about once a week? A. No, sir.

Q. Please name the largest of those 135 towns. A. I can name a number of them, as to which I cannot tell you which is the largest or the larger ones.

2 Q. Name the larger towns in Kansas or in your district, where the General Film Company does not have customers. A. Caldwell, Kansas; Harper.

Q. How large is Caldwell? A. I cannot give you the population of it.

Q. How many theatres has it? A. Two.

Q. Are they theatres that are going all the time? A. Running six days in a week.

Q. Name some more. A. Harper.

Q. How large is that? A. I don't know.

Q. How many theatres has it? A. One theatre.

3 Q. Does that run all the time? A. All the time. Anthony.

Q. How large is that? A. I cannot give you the population of it. I don't know.

Q. How many theatres? A. One.

Q. How often does it run? A. Six days in a week.

Q. Well, name some more towns? A. Garden City.

Q. How large is it? A. I cannot give you the population of any of these.

Q. Well, you gave the population of these places that you testified to on direct examination? A. If I would be asked about New York, probably I could give a city like

4 New York, but if I was asked Hoboken, I could not give it.

Q. Well, these are all very small towns, aren't they? A. No. Not necessarily. Two or three thousand people. That is a big town in Kansas.

Q. How many of these 135 towns have two or three thousand inhabitants? A. I cannot tell you that.

Q. There are very few of them, aren't there? A. No, quite a number.

Q. Name some more of them? A. Garden City, Dodge City, Larned, Great Bend, Oysington.

Q. How many theatres have these towns you have named, each of them? A. Great Bend has two, Garden City has two, Dodge City has three, Larned has two, Oysington has two, Downes has two, Stockton has one, Osborne has one, Plainville has one, Smith Center—I cannot say whether they have two or more. All of these run six days in the week. 1

Q. Name some more towns having theatres running six days in a week in which you have not a customer? A. Belleville, Mankato, Norton; oh, there are so many of them, they would tire me out.

Q. Now, name some of these 135 towns that have shows, these so-called store shows, that run only one night a week? A. Sutphen, Kansas; with a population of 30. 2

Q. That is one of the towns where the General Film Company has no customer? A. When they show any pictures there, they generally want the General Film Service.

Q. Is that one of the towns you included in your 135? A. No, sir; not running at the present time.

Q. Well, name some of these towns, 135 towns which you gave on direct examination, which have only so-called store shows? A. Winchester, Sutphen, Corker City. They are all small places. So many of them, I cannot remember all. 3

Q. Are those all you can think of? A. Just at this moment, yes.

Q. How do you get your films in Kansas City? A. By express and parcels post.

Q. From what places? A. Orange, New Jersey; Bound Brook, New Jersey; New York and Chicago.

Q. Philadelphia? A. Philadelphia, yes. Lubin.

Q. Then you send them out from Kansas City to the customers located in these places you have named? A. Yes, sir.

Q. What per cent. of your weekly gross receipts is made up of the rentals for these films? A. All of the \$7,700. 4

Q. How long have the Famous Players been doing business in your territory? A. We have not felt their presence there to any extent until the last three or four months.

Q. How long have Warner's Features been doing business there? A. About a year, I should judge.

Q. In renting films to your customers, do you charge them by age? A. The value of that is determined by the age.

Q. And not by the make of the manufacturer? A. No, sir.

1 Q. You have nine pictures of the same age, each from one of the different manufacturers whose output the General Film Company distributes, you charge the same for each of those nine reels? A. The price would be the same.

Q. Irrespective of the quality? A. If they are the same age.

Q. The fact that one may be a tragedy, and another a comedy, and another a scenic picture, makes no difference in the price quoted by you? A. No, sir.

2 Mr. GROSVENOR: I wish you would produce for inspection, on further cross examination, the list of 535 theatres which you referred to on direct examination as having been the source, that is, the card index—as having been the source of the information upon which you gave your answer on direct examination, that there were 535 theatres. I wish you would produce that as it was when you left Kansas City.

Mr. CALDWELL: Have you got that list with you?

The Witness: I have got the total.

3 By Mr. GROSVENOR:

Q. Did you bring the list with you? A. I don't know whether I have it or not.

Q. Don't you know whether you brought that card index? A. I have a mass of papers, and it may be among them. I have not looked at it since I came to New York.

Q. When did you come to New York? A. On Monday morning.

Q. How large is this card index? A. Oh, I have not the card index with me.

4 Q. That is what we are asking for. You did not bring the card index with you? A. No, sir.

Redirect examination by Mr. CALDWELL:

Q. Now, have you included in the list of customers which you state are being served by your office, all theatres served from your office that take service only once or twice a week? A. Yes.

Q. Could you state how many on that list of theatres are of that character? A. I cannot. 1

Q. Do you serve many customers of that character?

Mr. GROSVENOR: I object to this, the witness having testified on cross examination that all of his customers have a daily change, that is, all making up this list of 246 have a daily change, except seven.

By Mr. CALDWELL:

Q. You may answer the question. A. There are not many of them. 2

Recross examination by Mr. GROSVENOR:

Q. On the list of 535 theatres you have included, as I understand your testimony, the names of theatres which take service only once a week? A. Yes.

Q. But the list of 246 theatres served by you includes 239 theatres that have a daily change of program, and seven theatres served by you which change either three times or two times or once a week, is that right? A. No, that is not right. 3

Q. What we are trying to get at are the facts, so please state them. What is the fact? A. That is what I am trying to give. I misunderstood your question there. You asked whether there would be a daily change or less than a daily change. I figured we had just about so many theatres that used film changing Monday, Wednesday and Friday, or Monday, Thursday, Saturday and Sunday. Now, I don't know how many of them there are that only run one reel a week.

Mr. GROSVENOR: Mr. Examiner, go back to the answer on the cross examination, toward the beginning, when I asked him about his 246 theatres, and see what he gave. 4

The Examiner refers to portions of the cross examination.

Mr. GROSVENOR: I read to you the answers you gave on your cross examination, and ask whether that is your testimony.

1 The Examiner reads the testimony as follows:

"Q. All these theatres which you serve, being 246, have a daily change of program? A. Not all of them.

"Q. How many of them do? A. There is approximately seven that do not.

"Q. And what service do they take? These seven that do not take a daily service, how often do they change? A. Some three times a week, and some four."

2 By Mr. GROSVENOR:

Q. That is right, isn't it? A. That is what I testified to at that time, but I did not understand that you wanted to include in there those that only run one day in a week.

Q. How do you want to change those answers?

Mr. CALDWELL: Make whatever explanation you see fit.

3 The Witness: Where I say seven there, I want to say I don't know how many there are that run less than a daily program. Those seven are theatres that change three and four times a week.

By Mr. GROSVENOR:

Q. Well, then, in the former answer you stated that 239 theatres served by you make a daily change, isn't that correct? A. No.

4 Q. Then, how many theatres do make a daily change? A. That I cannot tell you. If you have reference to those that run one day in a week, or two days in a week, I cannot give you that number, but they are included in the 246.

Q. How many of those 239 theatres are open only one day in a week? A. I cannot tell you that.

Q. Well, are any of them open only one day in a week? A. Some of them.

Q. It is a very small per cent., isn't it? A. I should think it was.

Q. There are not more than half a dozen of those theatres, are there? A. I could not say. 1

Q. Are there more or less than half a dozen? A. I could not say that.

Q. What is your opinion? A. My opinion is that there are more than that.

Q. How many more? A. I cannot tell you. If I knew I would be glad to tell you. But I don't.

WILLIAM C. BRANDON, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows: 2

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Brandon, and in what business are you engaged? A. In Atlanta, Georgia. Branch manager of the General Film Company's office in that city.

Q. And how long have you occupied that position? A. Since January 20th, 1913. 3

Q. And prior to January 20th, 1913, what business were you engaged in? A. Importing business.

Q. Importing of what? A. Woolens.

Q. Were you ever in the motion picture business at all, prior to that time? A. No, sir.

Q. What is the territory served by the Atlanta branch of the General Film Company? A. Well, the Atlanta branch has two sub-branches, one in Memphis and one in Jacksonville, and the territory covered by those three branches is, the State of Georgia, the State of Alabama, with the exception of Mobile, the State of Florida, with the exception of Tallahassee and Pensacola, North and South Carolina, Tennessee, part of Arkansas, the northern part of Mississippi, and a small portion of Kentucky. 4

Q. The two towns in Florida, Tallahassee and Pensacola, from what branch are they served? A. New Orleans.

Q. Who are your competitors in that territory? A. The Mutual Film Corporation.

Q. Where are they located? A. They are located in At-

1 lanta. They have sub-branches in Tampa, Florida, and Charlotte, North Carolina, and in Little Rock, Arkansas. The Consolidated Film & Supply Company, which handles the Universal output, located in Atlanta, with sub-branches at Charlotte, Jacksonville and Little Rock.

Q. What special feature companies are operating in Atlanta, or in the territory served by your branch? A. The Famous Players Company and the Warner's Feature Company. Warner's Features is located in Atlanta, and the Famous Players are handled by some individual concern in Chattanooga. I don't know the name of it, but
2 I think it is the Franklin Feature Film Company. I am not positive. And the World's Special Feature Company, located at Atlanta.

Q. Mr. Brandon, what is the extent of the competition that you are meeting in your territory from the special feature companies? A. Well, they are making serious competition. Do you mean the extent in dollars and cents, or in the number of theatres?

Q. In any respect. Just describe how keen that competition is? A. That competition is very keen and very
3 active. They are after our houses at the present time, morning, noon and night, to put in their features, and are meeting with large success at the present time.

Q. Have they gotten many of your customers? A. Yes, quite a few. Quite a number.

Q. And what character of customers are they taking from you, in point of size and importance? A. Well, mostly smaller customers. We have very few large customers in that territory; very few large theatres.

Q. In Atlanta, aren't there very many large motion picture theatres? A. The largest motion picture house in
4 Atlanta has a capacity of 500, which is not large, compared to the capacity of theatres in other sections.

Q. In what class of theatres, as a rule, are these special feature companies putting in their service? A. All classes.

Q. How many motion picture theatres are there in the territory which you have just described? A. Approximately 620.

Q. And of that number, how many are served by your

branch of the General Film Company? A. About 320. 1

Q. In the number 620 which you have named, have you included theatres that are served by other branches of the General Film Company? A. No, sir.

Q. Do you know how many are served by the Mutual in that territory? A. Approximately 175.

Q. And how many by the Universal? A. Approximately 125.

Q. Do you know about the percentage of business done by the special feature companies? What it would amount to in volume in that territory? A. I should say about ten per cent. 2

Q. How many motion picture theatres are there in the City of Atlanta, if you know, Mr. Brandon? A. Twelve.

Q. Of that number, how many are served by the General Film Company? A. Six, regularly.

Q. What do you mean by six, regularly? A. With entire service.

Q. And do you know what the situation is in Jacksonville, Florida? A. You mean the number of theatres?

Q. Yes. A. About ten. I am not positive.

Q. And how many are served by the General Film Company? A. Five. 3

Q. Macon, Georgia? A. Three. Three houses.

Q. And how many are served by the General? A. Two.

Q. And Savannah, Georgia? What is the situation there? A. Savannah has about eight houses.

Q. And how many are served by the General Film Company? A. Two.

Q. What other large cities are there in your territory? A. Knoxville, Nashville, Chattanooga, Birmingham.

Q. With respect to each of those cities, will you give the number of theatres, and the number served by the General Film Company? A. May I refer to my record? 4

Q. You may. A. Which one first, please?

Q. Knoxville. A. Knoxville has three houses, two of which we have.

Q. Proceed with the others? A. Nashville has six houses, four of which we have. Chattanooga has eight houses, four of which we have. Birmingham has about twelve or fourteen houses, of which we have five.

- 1 Q. Do you reach Mobile? A. No, sir.
 Q. Or Little Rock? A. Little Rock is handled from Memphis.
 Q. What is the population of Columbus? A. Twenty thousand.
 Q. How many theatres are there, motion picture theatres? A. Four. We have two.
 Q. Name some other large cities in your territory.
 A. Columbus, Charleston, Memphis.
 Q. Is there a branch of the General at Memphis? A. Sub-branch of the Atlanta branch.
- 2 Q. Well, take each of those cities up, and state the number of theatres and the number served by the General Film Company? A. Columbia has four theatres, of which the General Film has one. Memphis has about twenty theatres, of which the General has ten or eleven. Charleston has six theatres, of which the General has three.
- 3 Q. If you can, name any other large cities in that territory. A. Montgomery, Alabama, has five theatres, of which the General has two. Tampa, Florida, has about six theatres—I am not positive of the exact number—of which we have three. Miami, Florida, has five theatres, of which we have three.
- Q. Have you named Augusta, Georgia? A. No, sir. Augusta has four houses, of which we have two. That is practically all the large cities in our territory.
- Q. How about Rome, Georgia? Isn't that a fair sized city? A. Eight thousand.
- Q. What is the situation at Rome? A. We have one theatre there. There are two others.
- 4 Q. Now, will you state the character of the competition that you are having with the Universal and Mutual in that territory? State just what you do to get business, and what your competitors do. A. Well, we use every effort to secure all the business we can, in a fair, legitimate way. We have one solicitor who travels continually. The Mutual and the Universal each have a solicitor. They quote *for their product at, I should say, twenty per cent. less than we do, and offer much newer films at the same price than we can afford to give.

Q. Are they constantly after your customers to get them away from you? A. Continually, yes, sir. 1

Q. Do they succeed in getting many? A. Well, it does not fluctuate at the present time, very much. Most of the towns in that territory are small towns, with two or three theatres, and they seem to like a variety of programs. That is, if we have one house, the other two houses, one of them is liable to use the Universal, and the other the Mutual.

Q. And suppose there are three theatres in a town? Is the business divided between the Universal, the Mutual and General? A. Very often.

Q. They get about as many customers of yours, on an average, as you do of theirs? A. Yes, sir. I think more. 2

Q. Is their business growing rapidly? A. It has grown rapidly in the last two years. In the last year, rather.

Q. To what extent are the General Film customers at your branch, at Atlanta, at liberty to select their own program? A. Well, they are not at liberty to select their own program, unless we have the films open. All of our customers are on a schedule, which we offer them at the time we figure on them for service. When they come in and figure with us for service, we show them what we can give them. If that is satisfactory, they take it; if it is not, we cannot take them. Because of the permanent nature of the schedule. Each reel is at a certain point on a certain day. 3

Q. If a customer comes to you for service, he first indicates to you the character of the service that he wishes? A. Yes, the age of the service.

Q. Suppose a customer applies to you for service in a town where you are already supplying a customer; what, if any, efforts do you make to supply the prospective customer with a program which would not conflict or repeat on the program already held by the existing customer? A. We make every effort to avoid repeaters at all times; in fact, we cannot serve any repeaters, because the customers refuse to run them. They all insist on a clear program, changed daily. 4

Q. Do you find that your customers, as a rule, prefer that you shall book them and send a list of their bookings in advance to them? A. They insist upon it. That is the reason we have to have that permanent schedule, because

1 they insist upon having an advance program, which we could not give them without the permanent schedule.

Q. Do the customers send in a list of pictures from which they would like their program made up? A. Very often.

Q. Are you usually able to comply with their wishes in that respect? A. Yes, sir; as a rule. We may not be able to comply with the exact dates that they want, but at some age, we are usually able to give them what they want.

2 Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 o'clock P. M., of the same day, at the same place.

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NEW YORK CITY, December 10, 1913. 1

The hearings were resumed, pursuant to adjournment, at 2:30 o'clock P. M., December 10, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon PHILIP J. SCHECK, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL: 2

Q. Mr. Scheck, where do you live, and in what business are you engaged? A. I live in the City of Baltimore. I am engaged in the amusement business.

Q. What branch of the amusement business? A. Having vaudeville houses and moving picture houses.

Q. How long have you been engaged in that business? A. For about twelve years.

Q. In what branch of the business did you start out? A. We started out by giving church entertainments and moving pictures for lodges, etc. 3

Q. Will you state what other branch of the business you entered at any time and when? A. Well, I was a machinist by trade; I learned the machinist trade.

Q. No, I mean as to the motion picture business? A. We started, after we had been in business for a couple of years giving these church entertainments, we started in the business of the rental of film to different people.

Q. And did you own any theatres? A. Yes, sir.

Q. At the time you started into the rental business, how many theatres— A. We started with about four.

Q. When did you start in the film rental business? A. About 1907, I think. 4

Q. And what was the name of the firm or corporation under which you did business? A. Pearce & Scheck, Incorporated.

Q. And where did Pearce & Scheck do a film rental business? A. In the State of Maryland. Do you mean, where did we have our office?

Q. Yes. A. In Baltimore City.

Q. And what territory did you serve at that time? A.

1 Virginia, the District of Columbia, Baltimore, and Maryland, and the surrounding country.

Q. Did that company become a so-called Edison licensee in the year 1908? A. Yes, sir.

Q. And was it a member of the Film Service Association? A. Yes, sir.

Q. Did it subsequently take out a license from the Motion Picture Patents Company? A. Yes, sir.

Q. And how long did it continue in business as a Patents Company licensed exchange? A. To the year of 1910.

2 Q. Up to what time or about what time in 1910? A. About October. Some time in October.

Q. Now, during the years 1907 and 1908, and up to the time your company became a licensee of the Motion Picture Patents Company, did you have any trouble in your territory on the score of sub-renting? A. Yes, sir.

3 Q. Was that quite general in your territory? A. Yes, sir. It was not so much generally in the cities as it was in the counties and in the smaller towns. There is where we had the most trouble. In the city we could call after our film, and, as far as we were concerned, we generally would have to go after our films. The customer would not bring them in to us, even in our own city, and whenever they got out of the city, we would have to just whistle half of the time and wait for them.

Q. How many reels a week was your exchange taking in December 1908, just prior to the time when you became a Patents Company licensee? A. About seven. Six or seven.

Q. And that cost you about how much per week? A. About seven hundred dollars.

4 Q. Did you consider that at that time an exchange could do business if it leased less than twenty-five hundred dollars worth of film per month? A. No, sir.

Q. Was your exchange regarded, at that time, as a large one, or a small one? A. A small one.

Q. You are familiar with the requirements in the Motion Picture Patents Company license, that films shall be returned after the expiration of seven months? A. Yes, sir.

Q. At the time you signed that license, about how many reels did you have on hand? A. About five hundred.

Q. Between that time and September, 1909, had you added considerably to your stock of films? A. Only to the extent

of about—well, we were buying seven to eight reels a week, 1
you understand.

Q. When you commenced to make your returns of film to the manufacturers, what class of film did you select to make your returns with? A. The first shipment we sent them back was about three or four years old, film that we had bought when we first started, and practically no good at all.

Q. And thereafter, from time to time, when you made your returns, what films did you select? A. The worst films we could get our hands on, the ones we had the least use for. 2

Q. During the year 1909, who were your competitors; what other licensed exchanges were you competing with in that territory? A. Thomas Moore, of Washington, D. C. There was Lewis M. Swaab, of Philadelphia. Miles Brothers, I believe, had just gone out of business, but they were independent then, I think, or Weideman, in other words.

Mr. GROSVENOR: And where were they?

The Witness: He had an independent exchange. He also had an exchange in Washington. Swaab, of Philadelphia, had several customers in Baltimore. 3

By Mr. CALDWELL:

Q. Did you have those same competitors in 1910, and up to the time you sold to the General Film Company? A. Yes, sir.

Q. What was the character of the competition in Baltimore at that time? A. The competition was very keen.

Q. Did you regard it as fair or unfair? A. Unfair.

Q. In what respects would you say it was unfair? A. Well, for instance, I would have a customer, and we were just about to come out with that customer, and our competitor would come in and sell him a service about the same as we were selling at ten dollars or fifteen dollars cheaper than we could afford to sell it to him, or that he could afford to sell it to him, merely to get our customer. 4

Q. Would he sell the service for less than it cost, in order to do that? A. Yes, really less than it cost, to get the customer away from us.

- 1 Q. Do you know of any instance where your competitor would deliberately furnish a theatre that was competing with one of your customers with a superior class of service at less than cost, in order to force your customer to come over to him? A. I know an instance of where Tom Moore—he was getting a certain amount of reels a week, we will say, and there were three houses in this neighborhood, and he tried to get all three of them to keep one away from the other, which he could do with the amount of films he was buying, but we had one of those customers, and the one customer we had would not leave us. He goes to work and gives the other two exhibitors—
- 2

Mr. GROSVENOR: I object to all this as immaterial.

By Mr. CALDWELL:

- Q. Go on. A. If he could not get the other customer to handle that whole neighborhood with the films he was buying, he would give him superior or later or newer pictures than we could afford to offer our customer.
- Q. And what would you have to do? A. In return,
- 3 we would have to give our own customer pictures for the same money that really were worth twice the amount we were getting for them, merely to hold them.
- Q. Well, what was the effect on your customer in a case of that kind? A. How do you mean; what effect?
- Q. Well, if you had not given your customer the better class of service at less price, what would have happened? A. He would have quit, or he had to shut up his house, one or the other. He would have quit us, and gone to Tom Moore, or to some other man who could serve
- 4 him.
- Q. These pictures that Tom Moore would supply would be pictures that, in the ordinary course of events, would come to your customer later on? A. Yes, sir.
- Q. In other words, he would compel your customer to run repeaters on Moore's customers? A. Yes, that is right.
- Q. I think you have stated that you sold your business to the General Film Company in October, 1910? A. Yes, sir.
- Q. Will you state the circumstances leading up to that

sale, with whom you negotiated, and how those negotiations were concluded? A. Well, about three or four months before we really sold, we decided we could not continue in the film rental business, the way it was being handled by our competitors. We could not compete with them, and so we decided either to sell out or to stop buying films, and to use the films we had to the best of our advantage, renting as many of them as we could, and make all the money we could out of them. We came to New York at one time and saw Mr. Waters. 1

Q. Did Mr. Waters send for you? A. No, sir.

Q. Did anyone else suggest to you that you go to see Mr. Waters? A. No, sir, not a soul. If anybody did suggest it, they had nothing to do with the office. They were men who had already sold out, you know; and we told Mr. Waters what we had come there for, and he said, "I will tell you; I will call up Mr. Kennedy." And he had us wait, and Mr. Kennedy came right up there, and he talked over the business with us, and we closed the deal there. 2

Q. State what Mr. Kennedy said to you and what you said to Mr. Kennedy. A. Mr. Kennedy wanted us to put a price on our exchange, and almost any price would have been satisfactory to us, and so we didn't know what to tell him. We asked him then to make us an offer for it. So he told us what he would give for it, and we were perfectly satisfied, and were glad to make the sale. 3

Q. What price did he offer you? A. Well, it amounted, in round numbers, to around twenty-five thousand dollars.

Q. Had you and your partner, Mr. Pearce, discussed between you what price you would take, before you came on? A. Yes, sir.

Q. Or what price you ought to get? A. We figured that if we got fifteen thousand dollars, we would be happy. 4

Q. Was that sale entirely voluntary on your part? A. Yes, sir, it certainly was.

Q. Did anybody, whether connected with the General Film Company, or with the Motion Picture Patents Company, or anybody else, ever state or intimate to you that if you didn't sell, your license might be cancelled? A. No, sir.

Q. You were familiar, were you not, with the clause in

1 your license agreement permitting the Patents Company to cancel the license on fourteen days' notice? A. Yes, sir.

Q. Did that operate on your mind at all? A. No, sir.

Q. In determining whether you would sell or not? A. No, sir.

Q. Did you make any agreement with the General Film Company, either express or implied, that you would not go into the film exchange business in Baltimore, or anywhere else? A. No, sir.

2 Q. Was anything said on that subject? A. No, sir, nothing at all.

Q. And after the sale of your business to the General Film Company, in October, 1910, did you continue as branch manager of the General Film Company, for any time after that? A. Yes, sir; I think it was about six or eight months, I couldn't really tell you, but six months I was managing the business there.

Q. Did that branch of the General Film Company raise the prices to the exhibitor? A. No, sir; the prices remained the same.

3 Q. You were familiar with the prices you had charged before that? A. Yes, sir.

Q. The theatres in Baltimore, and the surrounding territory, at that time, were the most of them taking a daily change of program? A. Yes, sir.

Q. How many reels to a change? A. They were mostly getting about three reels in Baltimore, at that time, per day.

Q. What are they getting now, do you know, the most of the theatres? A. The majority of them are getting about four reels now.

4 Q. And are the prices now any higher than they were then? A. No, I think the prices are about the same.

Q. Then they are getting four reels a day, now, at the same price that they were paying for three reels before? A. Yes, sir, that they were paying for three reels before.

Q. Is the quality of the service that they are getting now, any different from what they were getting then, in point of the character of the pictures? A. I think the quality of the pictures has been steadily getting better, and on to a higher standard. From the very inception of the business, up to the present time, I think it has been getting better right along.

Q. How many motion picture theatres are Pearce & 1
Scheck running now? A. Eight.

Q. Where are they located? A. Seven in the City of
Baltimore, and one in the City of Frederick.

Q. Where are those theatres located in Baltimore?
A. You mean the names of the streets?

Q. Yes. A. There are four on Baltimore Street, one on
South Broadway, and one out in Hampton, and then we
have one on Hartford Avenue, and we have an application
in for another one, on North Avenue, which is not finished
yet.

Q. Now from whom are you getting service? A. From the 2
General Film Company, and we are getting service for our
Hampton house from the Baltimore Film Company, an inde-
pendent concern.

Q. What program is the Baltimore Film Company
handling? A. The makes?

Q. Yes, the Universal or the Mutual? A. I think they
buy a mixture of them. I think, Universal, mostly. They
have the Bison pictures, and things of that kind.

Mr. GROSVENOR: This is the Hampton Theatre, 3
that you speak of?

The Witness: Yes, sir, it is a small house.

By Mr. CALDWELL:

Q. Do you select your own program? A. We select the
age of the films we want.

Q. Do you allow the branch manager of the General
Film Company to make the selection for you? A. Yes, sir.

Q. Do you prefer that? A. Yes, sir.

Q. Would you rather have him do that? A. Yes, sir. 4
We feel that the manager knows the conditions of the
neighborhood we work in, better than we would know them.

Q. If you make a change in the program which has
been selected by the branch manager, do you always man-
age to get the change that you want? A. Yes, sir.

Mr. GROSVENOR: I object to the form of the last
question as leading, and move to strike out the an-
swer.

1 By Mr. CALDWELL:

Q. If you are dissatisfied with the selection of the pictures that you find on the program, made up for you by the branch manager, what happens? A. We change our service, and get the makes of film that we think would be good for that house.

Q. And do they always do that? A. Yes, sir, in all cases, sure.

Q. What kind of projecting machines have you used in your theatres? A. We have only used the Powers and
2 the Edison machines. Those are the only two machines we have ever handled.

Cross examination by Mr. GROSVENOR:

Q. Mr. Scheck, you have seven theatres in Baltimore? A. Yes, sir, that is, interested in them, own some, and am interested in some.

Q. They are the seven different theatres, which you were talking about on direct examination? A. Yes, sir.

Q. And six of those theatres display pictures of the
3 General Film Company? A. Yes, sir.

Q. And have they always displayed the pictures of the General Film Company? A. Yes, sir.

Q. Your seventh theatre is a smaller theatre? A. Yes, sir.

Q. Are those six theatres of yours among the larger theatres in Baltimore? A. Two of them are.

Q. Why have you not ever tried to show anything but the General Film Company's pictures in those six theatres?

A. Because I consider the independent pictures inferior, as far as subjects are concerned, far inferior to the General
4 Film Company's pictures. It is a detriment to the business, in my judgment.

Q. And would not satisfy your patrons? A. No, sir, not satisfy our trade.

Q. Are special features an important part of your program? A. In our houses, yes, sir. In one of our houses we try to get a feature whenever we can, you know.

Q. What did you mean by saying that in 1908 and 1907, when you were doing business as a rental exchange, you had trouble with sub-renting? A. Well, for instance, we

would have a customer, say, down in Virginia, and he will say, "I want twelve reels, in order to make but one shipment, and save the cost, to save the express charges, and I will hold these reels until Saturday, and I will return them," and we would ship him twelve reels, old reels, sixty or ninety day old pictures, and, instead of him holding these reels for his own use, he would be sub-renting them to his friends, in the neighborhood, and he would be making money on our pictures, down there, wherever they would go to.

Q. And you say you think that any rental exchange which did not handle twenty-five hundred dollars worth of film a month, was not entitled to be considered an exchange? A. They could not supply the trade, because that is only seven reels a week, and the people were changing every day, two reels, at least, a day, and they could not supply their own customers without repeating on them constantly, and a man would not stand for it; he would find his trade would not stand for it.

Q. There were, up until 1908, or up until that by-law was adopted, a number of companies or persons that were attempting to do a rental exchange business, who were buying less than twenty-five hundred dollars a month? A. Well, I don't know. I couldn't answer that, because I didn't enquire into the other fellow's business myself. I only know how we were running our business. They could not run it successfully, to save their lives.

Q. You don't know whether or not there were others that were doing business, or trying to do business on less than \$2,500 a month? A. No, sir, I don't.

Q. While you were doing a rental business at Baltimore, you had competition, you say, with rental exchanges at Philadelphia, and also in Washington? A. Yes, sir.

Q. That is territory that could be profitably reached from Baltimore by rental exchanges located there, and also could be profitably reached by rental exchanges located in Washington, and in Philadelphia? A. Yes, sir. It is only an hour's run from Washington to Baltimore, you know.

Q. When you sold out in October, 1910, to the General Film Company, you knew that the latter company had acquired a number of exchanges? A. Yes, sir.

Q. And it had, at that time, entered very largely upon the rental exchange business? A. Not in our section.

1 Q. Well, it had in other parts of the country? A. Well, I suppose they did, if they bought the exchanges out. I suppose, if they bought the men out, they took the business over of the men they bought.

Q. You knew, at the time you sold to the General Film Company, it had entered upon the rental exchange business on a large scale, did you not? A. Yes, sir.

Q. What was it that you sold to the General Film Company, your business? A. Everything we had pertaining to the film rental business. Not in the exhibition business, we didn't sell that.

2 Q. When you stated on direct examination that you selected your pictures according to the age, you meant, did you not, that age determines the prices of the pictures? A. That is right.

Q. You tell the General Film Company how much money you are willing to pay for your service, and then they adjust the pictures to that amount; that is, the age of the pictures to that amount? A. Yes, sir. We know about what the age of the picture would be at any price we would want to give. Of course, we practically carried the thing right on that way, from our own exchange.

3 Q. You pay the same amount for all reels of a certain age, do you not, irrespective of whether they are Edison or Biograph films? A. Yes, sir; that does not enter into it at all. Age controls the whole thing.

Q. Did you use the Edison projecting machines before the Patents Company was organized? A. Yes, sir.

Q. For how long? A. About eight or ten years.

Q. Had the machines been sold to you without any reservations or conditions? A. Yes, sir.

4 Q. And all of your theatres, or all the theatres in which you are interested, pay this two dollars a week royalty? A. Yes, sir.

Q. How long has this seventh theatre which you got, which is the only one using independent service, been displaying independent pictures? A. Oh, we have had that theatre, I guess, four years, and we have never had any competition out there until about two years ago, and it appears as if our competitors put in independent service, Wild West stuff, that people out in that neighborhood seemed to like better. They wanted it, and so we had to

put in the same sort of a service practically, so that we would get the trade. 1

Q. It has, then, been displaying the independent stuff about two years? A. About two years, yes, sir.

Redirect examination by Mr. CALDWELL:

Q. Are you, or are you not governed, in the selection of the character of the service you will take on, whether licensed or unlicensed, by the demands of the patrons of that particular theatre in question? A. Our patrons govern that. We have a house, and if we think independent service is the best for that house, and that we can make the most money, we will go to work and get independent service, and never in our life has anybody said to us that we cannot put in independent service, or put in Association pictures. 2

ALTON TREDICK, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR: 3

Q. What determines the boundaries of the district of the General Film Company which you have supervision over? Is the question clear? A. It is not quite clear, Mr. Grosvenor. I wondered if you meant the policy of determining the territory, or the actual boundaries.

Q. Who is your superior? A. My superiors that I get my instructions from are the officials of the General Film Company, of New York.

Q. Have you received instructions from the officials at New York as to what shall be the boundaries of the district over which you have control? A. No, sir. 4

Q. Then how do you know where the boundary lies between your district and the district of the nearest General agency or branch of the General Film Company? A. Those have been established for some time, as a rule, Mr. Grosvenor, and in the territory where I am at present located, they have undoubtedly been established for some time prior. There has been possibly one disturbance recently of the territory, and that is by reason of the fact that the Dallas branch is now in the hands of the State

1 of Texas. The balance of the territory, and the policy of determining it, has undoubtedly been arrived at by the question of the facilities in transportation and the express rates, for the reason that if the express rates are either higher or lower to any other branch, each branch manager, it is sort of understood unwrittenly, is entitled to any and all such business.

Q. What are the branches of the General Film Company which surround your district? A. That is possibly a little bit intricate.

2 Q. Let me make it more clear, then. What are the branches of the General Film Company which are your neighbors in doing business? A. We have a number. Those on the west, Denver and Phoenix, Arizona. On the north, Kansas city; on the north and east, St. Louis; on the east, Memphis and New Orleans. On the south, Dallas.

Q. Do you have meetings with the managers of these other districts and determine at such meetings what shall be your territory and what shall be theirs? A. Not any more. Those things were undoubtedly settled upon in the earlier days, and the lines—

3 Q. Well, have you attended such meetings? A. No, sir.

Q. Then do you know anything about them? A. No, sir.

Q. Isn't there territory on the borders of your district which may be reached just as easily from some other branch of the General Film Company as from your city? A. Figuring the facilities of transportation, yes; figuring the express charges, no.

4 Q. How have you arrived at this figure that you name as being the number of the theatres in your territory, given on page 2255, as 294? A. That has been brought about by taking the total number of customers that we supply at the Oklahoma City branch. Next, taking reports which we have absolutely no reason to doubt in any detail, having undoubtedly been confirmed a number of times, either verbally or by letter, of independent theatres who are in our territory, using independent service—

Q. These reports are made by the theatres to you? What reports do you have reference to? A. I possibly have used an incorrect word in using the word "reports." By report I mean that a certain man will write a letter stating,

for instance, that Mr. So-and-so is opening up a theatre in such and such a place, or that he would like to see what he could do about service, which was never completed, and an exhibitor may come into the office and, in discussing, for example, a certain town, we will ask him who is there in business. If he knows anybody there, or he may casually mention them as having helped him or assisted him in some way—

1

Q. Have you any regular mailing system or schedule from which you have ascertained this number 294? A. We have a list which we are gradually completing. Our territory has not been previously very thoroughly covered by traveling representatives, and at the present time our traveling representative is gradually accumulating a very complete set of reports on each town.

2

Q. You have included in this number, 60 which, you have stated, are very small theatres that run regularly or irregularly. Those are mostly theatres which are open only once a week. Isn't that the fact? A. Well, they run as the mood strikes the proprietor.

Q. And the mood strikes the proprietor about once a week? A. Not always. Sometimes more often.

3

Q. How many of the 118 theatres that you serve take daily changes or changes at least three times a week? A. I could not give you anything more than an estimate on that, Mr. Grosvenor, without consulting our individual accounts to secure an accurate total.

Q. Isn't it a fact that very few, if any, of your customers are these store show theatres that are open once a week? A. Well, we have included none of the irregular orders in that total of 118.

Q. The 118 is the list of your regular customers? A. Operating more than once a week.

4

Q. Have you other customers who buy from you regularly, and whose names are not included in that 118? A. I might cite an instance of what I mean by an irregular customer—

Q. You can explain later. You will have ample opportunity to explain. I want direct answers to my questions. Read the question.

The Examiner repeats the question to the witness as follows:

- 1 “Q. Have you other customers who buy from you regularly, and whose names are not included in that 118?”

The Witness: Yes, sir.

By Mr. GROSVENOR:

- Q. Is there any explanation you wish to add to that answer? A. I would like to cite an instance of an irregular customer in a gentleman by the name of Higgins, at Lone
2 Wolf, Oklahoma, who, for a period of about three consecutive weeks, ordered service, using them only one night during the week. That was approximately 90 days ago, and we have had no order since.

Q. His theatre is counted, however, as one of the 294 theatres in your territory? A. Yes, sir.

Q. Where were you before July 2nd? A. I was transferred from the Montana branch.

- Q. You testified, on direct examination, on page 2258, referring to when you were in the exhibition business, “I have always used licensed service, in every instance possible.” Why is that? A. Why have I used licensed service?
3

Q. Yes. A. It has been for the reason that we always felt that it was a better service.

Q. And that no other service would adequately satisfy your patrons, at the time you owned these theatres? A. Possibly adequately, but not as satisfactorily.

- Q. You rent the films to the exhibitors according to the age, do you not, and not according to the make? A. That is the basis upon which service is supplied, in this way, that we do not sell a certain age from the release date, but in proportion to the rental per day per reel, we distribute the service from the dates.
4

Q. If you have ten reels, one from each of the ten licensed manufacturers, for rental, and all of the same age, you charge the same for each of those reels? A. With the exception of what are known as specials.

Q. If you have ten of the regular reels, one being from each of the ten manufacturers, and each being of the same age, you charge the same for renting each of these reels? A. Yes, sir; with the exception of those instances where they have specials.

Q. And the specials of the different manufacturers are all charged for at the same rate, if they are of the same age? 1

A. No, sir.

Q. How is that fixed, then? What is a special? A. A special would be, for example, the Pathe Weekly special edition of the World's Baseball Series.

Q. Do specials come out on the regular releases? A. They do not do so very often, but occasionally.

Q. Then, going back to my question,—leaving out these occasional specials, on the regular releases, you charge the same for the films of the different manufacturers, when they are of the same age? A. Yes, sir. 2

Q. And these different reels, of the same age, on the regular releases, are consigned by the different manufacturers, at the same prices, when they are of the same age? A. Yes, sir.

Q. You buy them on their release day? A. Yes, sir.

Q. So you always get them new, and the prices, for all of them, are always the same, except the specials? A. Yes.

Redirect examination by Mr. CALDWELL:

Q. When you stated, on direct examination, that the General Film Company was serving from your branch 118 customers, what period of time did that relate to? A. That was for the week ending December 6th, if I am not mistaken. 3

Q. Did you include in that 118, any customers that were taking service, say, once or twice a week, that had been discontinued, where you served them only for a short time? A. Those were all live customers.

Q. And did that number include those that you were serving during the week ending December 6th, for less than six times a week? A. It included all customers that we served more than once per week. 4

Q. In selecting pictures to be used at your branch, what is it that guides you in the brand of pictures that you will select, and the number of prints of any given subject that you will select? A. My guidance in that is, in every instance, wholly and entirely the wishes of my customers.

Q. Is any influence brought to bear on you from the home office, to select pictures of all of the manufacturers, or are you left free to select only such brands as you find

1 are most in demand by your patrons? A. The General Film Company of New York have never said anything to me about what reels to purchase, or not to purchase, in the particular subject or make.

Q. In point of fact, do you use your own best judgment in making your selections?

Mr. GROSVENOR: I object to that as leading in form.

2 By Mr. CALDWELL:

Q. You may answer. A. Absolutely.

Q. Do you find that some of your patrons prefer certain makes of pictures, at certain times? A. Yes, sir.

Q. And that that demand among your patrons varies from time to time, in accordance with the popularity of the manufacturer or popularity of the actors employed by him? A. It usually refers to the subject.

Q. Do your patrons request certain special subjects? A. Yes, sir.

3 Q. And do they ask for the brands of certain manufacturers in preference to other ones? A. Yes, sir.

Q. And do you base your orders in accordance with that demand on the part of your patrons? A. Absolutely.

Recross examination by Mr. GROSVENOR:

Q. The branch manager of the General Film Company in one of the large eastern cities, I think it was Philadelphia, testified that his patrons had no demand for scenic or educational pictures. Is that also the case in Oklahoma? A. I do have some very amusing complaints right along that line. They do object to them.

4 Q. What type of picture do they prefer down in your section of the country? A. They prefer something that is strenuous.

Q. What do you mean by that, some of these East Side stories that we have here sometimes appearing on some of the films? A. I don't know exactly to what scenes you refer.

Q. I am trying to get you to describe. What is the type of film that is most popular in your territory? A. Well, it is the type of a film that has a sensational point in it. Just as a little incident, there are several happen-

ings that are sensational; for example, the Vitagraph Company released "The Wreck" in three reels, and while there are two reels of excellent acting, to my mind, in it, the third reel has a smash-up of a runaway engine and another engine carrying some cars. That particularly appeals to them. That is a sample of sensationalism. 1

ELMER R. PEARSON, recalled for cross examination, deposed as follows: 2

Cross examination by Mr. GROSVENOR:

Q. Mr. Pearson, you are the manager at Omaha? A. Yes, sir.

Q. You stated that your district embraces a large part of Iowa? A. Yes, sir.

Q. There have been three or four district managers and branch managers here who have testified that their districts included part of Iowa. Will you please state in what manner the State of Iowa is divided up among different district managers? What are the territorial lines of division? A. Practically the customers' inclinations. The General Film Company makes it a rule to supply a customer from whatever branch he sees fit to get his service. Of course, there are a few restrictions on that. We want to take into consideration railroad facilities as much as possible. Of course, it should not make a great deal of difference to us how much express the customer cares to pay, but, at the same time, if the haul should be so long that we would lose an extra day going or coming, we would naturally use our influence to try to get him to secure his service from the branch nearest to him, but there are cases there in Iowa where the haul is twice as long, and also the express rates are considerably higher from the point where the man is getting his service than from some other branch of the General Film Company, and it is purely the customer's own inclination that he stays with whatever branch he is with, and very frequently they switch from one branch to the other in that territory as they themselves feel inclined. 3 4

Q. Then a given part of your district is territory that

1 is, in fact, in competition with the other branches? A. Yes, sir.

Q. And can be served equally well and with the same facility by one or more other branches as by your own branch? A. Yes. There is a territory in the border line of Iowa, both on the northeast and south, that can virtually be as well supplied from one branch as another, so far as facilities are concerned.

Q. And the same thing applies to parts of Nebraska? A. No, I would not say that about Nebraska.

2 Q. Then when there is a theatre in this competition district which is served by the independents, and not served by one of the other branches of the General Film Company, you feel at liberty to circularize that theatre? A. Yes, sir. We have very frequently three or four branches circularizing the same independent theatre at the same time.

Q. When you stated that there are 750 theatres in the two States of Iowa and Nebraska (p. 2263), you are referring to the number of theatres that you circularize, or where did you get that number? A. Well, I secured that number—
3 I have my own customers; that is, customers of the Omaha branch, and customers of the other branches of the General Film Company in those two States. In addition to that, there are a great many independent theatres, and we have had a mailing list at the Omaha office for a couple of years, and at periods of about six months, I go through the list of towns in the State, taking all towns over 500, and if I don't have a name in my mailing list for that town, I address a letter to "the manager of the moving picture theatre" at that point, and when I get a reply
4 from there, I then put the customer's name, or the theatre's name, as a part of my mailing list, and if the letter comes back to me, I come to the conclusion, of course, that there is no theatre there. In addition to that, my road men turn in a report of every town they call on. What theatres are there, the names of the proprietors, seating capacity, and how many days they run, and so forth.

Q. Have you counted up, then, the names on this mailing list? A. Yes, sir.

Q. And it is from that that you got this total? A. Yes, sir.

Q. On direct examination you stated: "Well, taking all of Iowa and all of Nebraska, there are about 750 theatres in the two States." You have, then, on your mailing list theatres located outside your district? A. No, sir. I would not say so. I think I can serve any theatre in either Iowa or Nebraska with pretty good facilities from the Omaha office. 1

Q. And you feel free to circularize and attempt to get the business of the theatres in that district? A. In those two States.

Q. Although some of them may be served by another branch of the General Film Company? A. Yes, sir. 2

Q. Now, I take it from your description of your mailing list that you have included as a theatre every place that exhibits motion pictures at any time? A. That is a part of my mailing list, but is not a part of the number I gave you as theatres.

Q. What does the 750 include? A. That includes all theatres that run pictures more than one night a week, both in my own customers, and in the customers of the independents.

Q. I understood you to say that your 750 theatres was made up from these inquiries that you sent out? A. They are, yes, sir. 3

Q. How many names are there in your mailing list? A. Well, let me see—I get 800 letters printed, and it practically uses them all up. I should say there were 800.

Q. What means of information have you upon which you base your statement that each of these 750 theatres is open more than once a week? A. By the reports that I described in a previous answer, that I have from my road men, and also from letters from the customers indicating that they are running more than one night a week. There are probably 50 theatres in that territory that run— 4

Q. Did you make any effort, in going through this mailing list and arriving at the number 750, to count out the theatres that are open only once a week? A. Yes, sir, I did.

Q. When did you do that? A. I did that last week.

Q. Why did you decide to count out theatres that are only open once a week? A. You have got to count it one way or the other, don't you?

Q. Don't you consider a theatre a place that is open only one night a week? A. Well, it may be a theatre, it may

1 be an opera house, it may be a school house, it may be a store room used for a theatre on that particular night. We do not give them any special significance as a theatre. We accept their business when we get it, but we keep in closer touch with the theatre that runs every day than we do with the house that only runs intermittently, or only once a week.

Q. You do not consider a place that is open only once a week, a theatre, then? A. Some of them are and some of them are not.

2 Q. If they are, and some of them are theatres, why didn't you include them in your number of 750? That is what I am trying to get at. A. Well, I suppose there is perhaps an inconsistency there, but I figured that I had to arrive at something reasonably definite, and there may be 50 and there may be a hundred of these theatres running intermittently in my territory, and are pretty hard to know about, and these that run regularly are not so hard to know definitely about.

3 Q. Isn't it a fact that you have included in your 750, all these places that are on your mailing list? A. No, sir, I have not. There are probably 50 others on my mailing list that I am not positive run even once a week.

4 Q. Why did you, when you started to count these names, why did you eliminate these one-night shows? A. Well, because, just as stated in my last answer, I don't know absolutely that they run this one night a week, but my mail is received at the point, and the points are so small that I have never seen fit to send a road man down there to see what the business consisted of, but my mail is being received there, and I have reasons to believe that perhaps they are running intermittently, or perhaps once a week, but I am not positive of it, and for that reason I did not count them.

Q. These 750 on your list are all theatres that change at least three times a week? A. Yes, sir. They all run more than one day a week.

Q. And do you have some customers that run one day a week? A. Yes, sir.

Q. How many should you add to that 750, if you should add the customers that take service once a week? A. That varies anywhere from 12 to 21, I believe. Perhaps 24. I want to also say that all of those do not run one night every week. Some weeks they do not run at all.

Q. Did you bring your mailing list with you? A. I did not. 1

Q. Or any memorandum of your examination of the mailing list? A. Yes, I have a memorandum of the examination of that mailing list.

Q. Will you let me see it? A. I have not it with me.

Q. What did you do with it? A. It is up at the hotel. I can go up and bring it down if you wish.

Q. You will be here tomorrow, won't you? You are not going back tonight, are you? A. I am going to go back just as soon as I can be excused here, and get through with our meeting. I leave either tonight or early in the morning. 2

Q. The meeting continues tomorrow, doesn't it? A. I don't think so.

Q. On direct examination this question was asked you, at page 2264: "Q. What is the character of the motion picture theatres in the district which is served by your branch, as to size and construction? A. Well, they range anywhere from 200 seating capacity, up to as high as 1,800. I should say the average seating capacity would probably be something about 350 or 400, and, of course, they vary in appointments as well. Some of them are very elaborate theatres, and, of course, a great many are of very cheap construction, and in some of the smaller towns particularly, they are just what we term ordinarily as store shows. They have a store room and have put in some seats and are operating as a picture show." In answering the question there put to you, were you describing only the 750 theatres named in your previous answer, or did you intend to describe something in addition? A. No. I intended to confine myself to the 750. 3

Q. Do you supply any of these so-called store shows? A. Yes, sir.

4

Redirect examination by Mr. CALDWELL:

Q. Who is it that selects the pictures to be leased by your branch office? A. I do.

Q. Is there any effort made on the part of the home office to influence you in the selection at all? A. No, sir.

Q. In making your selections, what is it that guides you? A. The demands of our customers.

Q. Do you find that that demand varies with different patrons? A. Yes, it does.

1 Q. And does it vary as to the make of the pictures?
A. It does.

Q. Do you find that some brands are more popular than others? A. Yes, sir.

Q. And to what do you ascribe that variance in the demand? A. Well, it depends a little on the locality. Some cities, seemingly, the exhibitor has had considerable influence in the more classical, educational, and so forth. And in the other cities the exhibitor has been catering more, it seems, to the rougher element, by running more sensational films.

2 Q. And have you found that the brand of any given manufacturer varies from time to time? A. Yes, it does, some, but there are some of them that are known as generally good all the time. Of course, they vary.

Q. And do you feel obligated to take the entire output of all the ten licensed manufacturers? A. No, sir.

Q. Or one of each, irrespective of whether it is good, bad, or indifferent? A. No, sir, there are some I do not buy right now, or have not at any time.

3 Q. Do you find that your customers show preference for the pictures of certain producers over the pictures of other producers, of the same age? A. I don't believe I understood the question thoroughly.

Q. Mr. Grosvenor has asked you if the price of the picture was determined entirely by the age of the picture. A. He did not ask me that question.

Q. Well, do you find that your customers show a preference for a picture of one producer over the picture of another producer, irrespective of the question of age? A. Yes, sir, they do.

4 Q. Do you attempt to conform to that preference? A. I do.

Recross examination by Mr. Grosvenor:

Q. When you buy, or rent, or obtain, or lease film from the different manufacturers, you pay the same thing for the product of each manufacturer? A. I understand we do, yes.

Q. Don't you know? A. Not definitely. Not positively, but I have been given to understand that we do.

Q. And when you rent these films of these different manufacturers to the exhibitor, you charge the same for the regular releases of the same age? A. Yes, sir.

Q. And the fact that the exhibitor may prefer some of the sensational stuff to some of the other kind has not anything to do with the price that he pays? A. No, it does not. 1

Redirect examination by Mr. KINGSLEY:

Q. You say that the age of the film determines the price? A. Practically so, yes.

Q. Now, assuming that you have motion pictures from ten different manufacturers, all of the same age, do you find that the exhibitor has preferences with respect to these motion pictures of the same age, furnished by the ten manufacturers? A. Yes, sir; they do. 2

Q. And do they express this preference to you, as an exchange man? A. They do.

Q. And do they urge upon you the desirability of respecting their preference, and of giving them the pictures they want? A. Yes, sir.

Q. And do you endeavor to give them the pictures they want? A. I do.

Q. And do you make your orders in accordance with the preferences which the exhibitors show? 3

Mr. GROSVENOR: Objected to as leading in form.

The Witness: Yes, sir.

(For further cross examination see page 2424.)

WILLIAM C. PRELLER, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR: 4

Q. Mr. Preller, you are the branch manager at Minneapolis? A. Yes, sir.

Q. And your district reaches down into Iowa? A. Yes, sir.

Q. The same state respecting which Mr. Pearson testified? A. Yes, sir.

Q. Do you agree with him that there are parts of your

1 district which are in competition with other districts of the General Film Company? A. Yes, I do.

Q. That is, there are customers in your district who might be served with perhaps the same facility by Mr. Pearson's branch? A. Yes, sir.

Q. There are other customers who might be served with the same facility by other branches of the General Film Company? A. Not in the particular district that I put my stuff.

2 Q. Is he the only neighbor you have? A. No. Milwaukee could go down into Iowa if they so desired, but it is not advisable. Chicago, of course, reaches the eastern part of Iowa on the river.

Q. So the Chicago branch office also reaches down into Iowa? A. On the river point. Three or four river points.

Q. When you testified that there are 670 motion picture theatres in your territory, you referred to the number on your mailing list? A. I take that number from my card file system. Practically a mailing list.

3 Q. You circularize such exhibitors located in Iowa as you think may be served with facility by your office? A. Yes, sir; providing I have a record that Omaha is not supplying that particular town.

Q. But if there is a theatre in Iowa which you think can be readily served from your office, and which is not being served by any other branch of the General Film Company, you will circularize that theatre? A. Yes, sir.

Q. Are these 289 theatres served by the Minneapolis branch, as testified by you on page 2270, all theatres which take a daily or tri-weekly service? A. I have included on that record every account that I have handled for one day or more.

4 Q. How many of those take one-day service? A. I should judge, about ten.

Q. In this territory, Minnesota, North Dakota, South Dakota, northern Iowa, and northwestern Wisconsin, are there not a large number of small towns which have store room shows or places where pictures are exhibited only once a week? A. Quite a number, yes.

Q. Those have all been included in this 670, being the total number of theatres, just as you have included in your 289 the ten theatres that take service from you only once a week? A. Yes, sir, I have included in that list any record

that I may have had of an exhibitor who has run pictures at one time, within the last few months or so. 1

Q. How do you get your films, Mr. Preller? A. They are forwarded to me from the several manufacturers from whom we purchase.

Q. That is, from New Jersey and Pennsylvania and New York? A. Yes, sir. And Chicago.

Q. There are not any of them that are made up in Minnesota? A. No. None.

Q. They are shipped from these places to your office? A. Yes, sir.

Q. And then reshipped by you to your customers located in the States you have named? A. Yes. 2

Q. What per cent. of your total weekly receipts is made up of the payments that come from the exhibitors for these films? A. I should judge, about 90 per cent.

Q. You charge these theatres the same thing for the reels of the different manufacturers, of the same age? A. Yes, sir.

Q. You pay for these reels the same per reel? A. I understand they do.

Q. You do not pay directly through your branch? A. No, sir.

Q. You send the money on to New York? A. I just report to New York. 3

Q. And when do you make your report? A. Weekly report.

Q. What does that weekly report state? A. The number of reels purchased.

Q. From each manufacturer? A. Yes, sir.

Q. Is that the extent of it? A. That is the extent.

Q. You do not state the number of customers you have served that week, on the report? A. Not on that report, no.

Q. How often do you send in a report stating the number of customers you are serving? A. It is a weekly report, giving the outline of the number of theatres we have got for that week. 4

Q. Does that report show anything besides the number of theatres that you serve? A. Yes; it shows my weekly expense.

Q. Does it show the number of theatres in your district, as estimated by you? A. Well, it is an accurate

1 record that I have of all the accounts I have during that period.

Q. I mean, does this weekly report which you send in to the home office state upon it your estimate of the total number of theatres in your district? A. No, sir.

Q. Do you, at any time, send in to the General Film Company a report showing your estimate of the total number of theatres in your district? A. No, sir.

Q. Or of the total number of theatres being supplied by the Universal? A. No, sir.

2 Q. Or by the Mutual? A. No, sir.

Q. How long has the Famous Players been doing business in your territory? A. Six months.

Q. How long have the Warner Features? A. About one year, I judge.

Q. Do you know a man named J. S. Bassett, of Independence, Missouri? A. Yes, sir.

Q. In 1911, did he run a theatre by the name of the "Gem Theatre"? A. I think that was the name of it.

3 Q. I show you some correspondence on the letterhead of the General Film Company, addressed to J. S. Bassett, and signed, "William C. Preller, Manager," and also several letters on the letterhead of the Motion Picture Patents Company, and signed, "Motion Picture Patents Company, by J. B.," all dated in the months of May, June and July of 1911, and ask you to state whether you recognize those papers and identify them as being letters written by you, or "J. B.," and also letters written by the Motion Picture Patents Company on the same subject?

4 Mr. KINGSLEY: I object to the method employed by counsel in attempting to prove letters written by the Motion Picture Patents Company.

The Witness: I identify the letters that I have written.

By Mr. GROSVENOR:

Q. All of these blue letters were written by you? A. No, they were not. Some of them were written by Mr. Jeffrey.

Q. And who is he? A. The correspondence clerk. Those I have signed are the ones written by me.

Mr. GROSVENOR: I will put them in evidence, those
that the witness identifies as being written by himself,
or his branch. 1

The letters offered are received in evidence and are
marked by the Examiner, respectively, Petitioner's
Exhibits Nos. 243, 244, 245, 246, 247, 248 and 249, and
are as follows:

Petitioners' Exhibit No. 243.

(Letterhead)

GENERAL FILM COMPANY. 2

Des Moines, Iowa.

May 9th, 1911.

J. S. Bassett,
Independence, Iowa.

Dear Sir:

Yours of the 7th received, enclosing remittance of
\$33.25, which we have placed to your credit for film ren-
tal and supplies for which we thank you. Also note 3
what you say in reference to War Game and we regret
exceedingly you have found it so unsatisfactory. Yours
is the first complaint of any of our accounts and only
this morning we had a phone message from Bloomfield
in which they said they did the largest business than
any special film put on. As to the Battleship Texas we
have you booked for June 5th and also Maid of Niagara
for May 8th, and no doubt same reached you in time for
your service.

In reference to "Buffalo Bill's Wild West" and "Paw-
nee Bill's Far East" show, we must ask you not to run 4
these film as they have never been sanctioned by the
Motion Picture Patents Company. The men traveling with
these two specials are misrepresenting the fact that the
film were made by the Vitagraph people and we trust you
will not jeopardize your license by running these spe-
cials. It is very easy to cancel the booking on these film
as they have been misrepresented. We trust you will keep
this in mind and be governed accordingly. We wish to
add that they are making it a particular point to run

1 these film in licensed houses as they desire the Patents Company to cancel as many license as possible so that the Independent people can have a better opportunity of putting their service into houses now satisfied with licensed stuff. We certainly would regret it if you do not cancel this booking and with this information before you, we will not cut out the film for Friday unless you wire us.

Now, friend Bassett, do not take any chances on the above booking as we know you will regret it.

2 Yours very truly,
GENERAL FILM COMPANY.
Wm. C. Preller,
Branch Manager.

WCP/ER

Petitioners' Exhibit No. 244.

(Letterhead)

GENERAL FILM COMPANY.

3 Des Moines, Iowa.

May 12th, 1911.

J. S. Bassett,
Independence, Iowa.

Dear Sir:

4 Your telegram before us and cannot find words to express our regrets at the attitude you have taken in reference to running the Buffalo Bill and Pawnee Bill film. However, if our accounts take chances on cancellation of their license it is beyond us. You evidently do not realize what steps you have taken and as you have made other arrangements we are taking you off our shipping records taking effect on May 11th.

We wish to take this opportunity of thanking you for many past favors and hope that nothing serious will be the results of this move.

Yours very truly,
GENERAL FILM COMPANY.
Wm. C. Preller,
Branch Manager.

WCP/ER

Petitioners' Exhibit No. 245.

1

(Letterhead)

GENERAL FILM COMPANY.

Des Moines, Iowa.

May 16, 1911.

J. S. Bassett,
Independence, Iowa.

Dear Sir:

2

In reply to yours of May 14th, desire to state that we have carefully read your letter and are somewhat surprised that you are blaming us for your discontinuance. We are strictly forbidden to supply a house that we know is using licensed and unlicensed together and there was no alternative for us to take. The Patents Co., will bear us out in this. We think you have made the mistake of your life and think it would be advisable to write the Patents Co. a letter of explanation. We are glad to learn that you have no particular hard feelings for us. Can assure you your patronage has always been appreciated, and we have nothing but the highest praise to give you for the promptness in which you have settled your account.

3

With best wishes for your future success, we are,

Yours very truly,

GENERAL FILM COMPANY.

Wm. C. Preller,
Branch Manager.

WCP/FF

4

1

Petitioners' Exhibit No. 246.

(Letterhead)

GENERAL FILM COMPANY.

Des Moines, Iowa.

June 28, 1911.

J. S. Bassett,
Independence, Iowa.

2

Dear Sir:

3

We today received a communication from the Motion Picture Patents Company, which we are enclosing herewith. We trust that you will be able to see your way clear to comply with their wishes as the only sacrifice would be the payment of the royalty in advance in a lump sum. We of course would reduce your service \$2.00 per week for the six months that the royalty would be applied and we believe this would be a splendid opportunity for you to again take hold of the licensed service. We trust you will be able to see your way clear to do so and let us know by return mail, returning letter to the Patents Company so that we can write them intelligently as to your wishes.

We trust that we will have the pleasure of again lining you up at an early date for service.

Yours very truly,

GENERAL FILM COMPANY.

Wm. C. Preller,
Branch Manager.

WCP/JD

4

Petitioners' Exhibit No. 247

1

(Letterhead)

GENERAL FILM COMPANY.

Des Moines, Iowa.

July 1st, 1911.

J. S. Bassett,
Independence, Iowa.

Dear Sir:—

2

We are just in receipt of your letter of the 29th also letter from the Motion Picture Patents Company stating they will grant you a license for your Gem Theatre providing you will pay six months advance royalty fees amounting to \$52.00. By your letter we note you hardly see the justice of their demands. We note they desire to have you pay the royalty in advance for six months, beginning, Monday July 3rd and we will reduce your service for \$2.00 per week beginning at that time. We hope you will send your draft to them at once covering this amount and that you will be very careful in the future. The reduction in service we will give you will take effect July 3rd and stay in effect until January 1st, 1912. Of course the reduction of \$2.00 will only be made providing the Patents Company release us of our weekly fees to them for your House, which we believe they will do.

3

We are sure you will see the advisability of following our suggestions and line up for service in this manner. If you will attend to this at once we will be able to ship you for your opening date of July 7th. We are just as desirous of securing the account as you can possibly be in using licensed service and as our business relations have always been most pleasant we are sure they will continue so. Please let us have an expression from you by return mail in reference to this matter as it is one of great interest.

4

Thanking you for past favors and with best wishes for your success, we remain

Yours very truly,

CWJ/ER

GENERAL FILM COMPANY.

1

Petitioners' Exhibit No. 248.

(Letterhead)

GENERAL FILM COMPANY.

Des Moines, Iowa.

July 4th 1911

J. S. Bassett,
Independence, Iowa.

2

Dear Sir:—

Yours of the 3rd received in reference to ours of recent date in which we took the matter up with you in reference to communication received from the Patents Company. We note the position you have taken in the matter and of course the writer is utterly helpless to do anything further. Would suggest however that you write the Patents Company again and I will also drop them a line asking them to reconsider the proposition made to you. Of course no one regrets it more than the writer does this unfortunate affair has happened but believe you will be able to straighten the matter out at an early date.

3

Yours very truly,

GENERAL FILM COMPANY.

Wm. C. Preller,
Branch Manager.

WCP/ER

Petitioners' Exhibit No. 249.

4

(Letterhead)

GENERAL FILM COMPANY.

Des Moines, Iowa.

July 8th 1911.

J. S. Bassett,
Independence, Iowa.

Dear Sir:—

Yours of July 7th received enclosing draft amounting to

\$52.00 which was placed to your credit by the Motion Picture Patents Company, 80 Fifth Avenue, New York City. Thus clearing away the difficulty between you. We have frequently expressed our regrets that this has happened as it is evident that there was a misunderstanding however they are the powers to be and we have to abide by their wishes. The pill may be bitter to swallow but the first effects will soon wear off and everything will go along smoothly therefore we ask you to cheer up and we will try out best to redeem this by giving you the very best service possible and if at any time it does not meet with your approval kindly notify us and we will be governed accordingly. The understanding is that you wish to run twelve reels and two sets of song slides per week. We have reduced your rate as per our recent phone conversation. If we have the pleasure of supplying you with films at the first of the year we will of course make your rate \$27.00 again.

As per our telephone conversation we made you shipment of films and hope the selection will meet with your approval. In regard to putting the Waverly and Cedar Rapids on the same circuit we will not put the three houses on the same circuit and believe that we have reasons to justify us in our decision.

Yours very truly,

GENERAL FILM COMPANY.

Wm. C. Preller,
Branch Manager.

WCP/BG

Redirect examination by Mr. KINGSLEY:

Q. Do you say that the price of motion pictures to the exhibitor is governed by the age? A. Yes, sir.

Q. Do you find that when you have pictures of the various producers of the same age that the exhibitors have a preference? A. Yes, sir.

Q. Do they express that preference to you? A. Yes, sir.

Q. And do you endeavor to place your orders accordingly, so that your exhibitors will be satisfied? A. Yes, sir.

Q. Mr. Preller, how long have you been in the motion picture business? A. Since 1907.

1 Q. In 1907 was the price of motion pictures to exhibitors governed by the age, as it is now? A. Yes, sir.

Q. And has that been the rule in the business since you have been in it? A. Yes, sir.

Q. Do you know anything about a similar rule prevailing among the unlicensed producers of motion pictures? A. In conversation it is generally expressed that way, that they put prices on certain ages of film.

Q. So that the age of the film, since you have been in business, has been the basis of its price? A. Yes, sir.

2 Q. And it is the basis of its price among the unlicensed producers of motion pictures? A. Yes, sir.

Q. In placing orders for your branch, do you use your own best judgment? A. Yes, sir.

Q. And without any instructions or directions from the home office? A. No, I receive no directions whatever.

Recross examination by Mr. GROSVENOR:

Q. Mr. Preller, where were you doing business in 1907?

A. In Pittsburgh, for the Pittsburgh Calcium Light & Film Company.

3 Q. Were you handling the Edison and Biograph makes there? A. Yes, sir.

Q. There were a number of exchanges that were handling those makes in competition with you at that time and in the year 1908? A. The time that I was connected with the Pittsburgh Calcium Light as correspondence clerk was about the time that the manufacturers got together, you know, and were known as licensed manufacturers, so I am not prepared to state anything previous to that time.

4 Q. Were there not a number of exchanges competing with the Pittsburgh Calcium Light Company? A. Yes, sir, there were two.

Thereupon, ELMER R. PEARSON resumed the stand.

Cross examination continued by Mr. GROSVENOR:

Q. Witness, you have returned to produce a memorandum, and you have handed me a slip of paper? A. Yes, sir.

Q. Does this paper comprise the entire memorandum which refreshed you in testifying on direct examination as to the number of theatres in your territory? A. Yes, sir; but I didn't use it, and did not refer to it to refresh my memory at the time I was giving my testimony.

Q. Where was this memorandum prepared? A. In Omaha.

Q. And who prepared it? A. My road man and one of my stenographers.

Q. And what was it prepared from? A. It was prepared from the mailing list, and the records at our office that were available for that purpose.

Q. You did not make it up, then, after an examination by yourself of the mailing list? A. I rechecked it, not all the way through, but I rechecked it, and came to my own conclusions as to what was there, irrespective of that memorandum.

Q. Now, this memorandum gives independent active theatres, 375, and licensed theatres, 340. Now, if these two figures be added together, you get the sum of 715. How do you reconcile that statement, that number, with the figure you gave on direct examination, at page 2263 of the record, 750 theatres in the two States? A. As testified, the road man and the stenographer prepared that statement. I rechecked it, and revised my figures from memory. As a matter of fact, there are ten more licensed theatres than that memorandum shows, as you will notice, and there are twenty-five more independent theatres than that memorandum shows. There are twenty-five theatres that I know of, independent, that are not a part of that list, that we computed the other figures from, and there are ten more licensed theatres than that memorandum shows.

Q. Well, on direct examination, in naming the licensed theatres you did not name more licensed theatres than this memorandum shows, did you? A. I think I did.

Q. Please examine your testimony at page 2263? A. Well, I turned in the independents as 400, which would indicate that there were 350 licensed ones. I do not know exactly how I enumerated them, or whether they might total exactly correctly or not, I don't remember.

Q. Please look at your testimony on page 2263 and see whether you named any more licensed theatres than appear

1 on that memorandum? A. Well, I named 750 theatres, and I named 400 as independent, or approximately that.

Q. We do not want it approximately. Get it down as you stated it. A. And the natural inference would be there were 350 licensed ones, although I probably only enumerated less than that. I know there are 52 being served from the Minneapolis branch. I turned in fifty. I do not see where it is here.

Q. Then it is a fact that, in giving the number on direct examination, you gave less than appear on the memorandum? A. I surely didn't.

2 Q. I show you the memorandum, which I will have marked for identification.

The memorandum referred to was marked "Petitioner's Exhibit No. 250, for identification."

Q. Now, this memorandum says, "Licensed theatres, of which 250 are Omaha." You stated that on your direct examination? A. Yes, sir.

Q. "Fifty, Minneapolis?" A. Where do you see that?

3 Q. At page 2263, you have 50 from Minneapolis? A. Yes, sir.

Q. Twenty-five, at Chicago. That appears on the memorandum, and that was the number you gave? A. Yes, sir.

Q. Two, Kansas City, Missouri, on the memorandum, and that is the number you gave on your direct examination? A. Yes, sir.

Q. Eight at St. Louis, that is on the memorandum, and you gave that number also in your direct examination? A. Yes, sir. You will note the question says, "about how many;" and "five exclusive."

4 Q. And "five exclusive?" A. Yes, sir.

Q. And those are not given on direct examination, are they? A. No, they are not.

Q. Now, do you say to-day, that there are more actually licensed theatres in your territory than were named by you on direct examination? A. There is an inconsistency in the direct examination, Mr. Grosvenor. I named 750 theatres, and I named 400 as independent, and that would leave naturally, the inference, although it was not stated in the direct testimony, that there were 350, about, licensed theatres.

Q. Well, you have given, then, or you have named a total of thirty-five more theatres than appear on that memorandum, have you not? A. Yes, sir. 1

Q. Now please state where you got those thirty-five theatres? A. I have not got them. They are in Iowa and Nebraska.

Q. Where did you get that number to add to this number that appears on the memorandum, so as to make that total of 750? A. From my own conclusions, from rechecking my employees' figures.

Q. How much time did you spend rechecking? A. I suppose half an hour. Between a quarter of an hour and a half hour. 2

Q. Please state the manner in which you rechecked it? A. I took the inquiry file that we have and the figures that they gave me, and also our reports, as we have them every week, of customers we have, the new customers taken on, and allowed for those that were discontinued, etc., and I gave the figures to you the other day, on direct examination.

Q. How much time did your clerks spend in arriving at this figure? A. That I could not say. Probably somewhere between two and four hours. 3

Q. And you, in the examination you made, which, you say, might have taken you fifteen minutes, or half an hour, decided that they, in their long examination, had omitted about thirty-five theatres? A. My clerks do not know everything about the territory that I do.

Q. Well, I say, you, in the period of from fifteen minutes to thirty minutes, decided that they had omitted at least thirty-five theatres? A. Yes, sir.

Q. And those were all, in your judgment, independent theatres? 4

Mr. KINGSLEY: I object to that. The witness has already answered that ten were licensed.

The Witness: I beg your pardon; I surely did. I do not see any unfairness there whatever.

By Mr. GROSVENOR:

Q. Now, witness, what instruction did you give your

1 clerks in making up this statement as to what they should adopt as the definition for the term "theatre"? A. I told them not to list any theatres that they knew not to be running more than one day each week; and I said, "You have some records of some theatres there that run one change a week, that may be running that one change two days." I said also, "Omit those, and I can form my own conclusions from them."

Q. Did you have such customers yourself? A. I have some, yes.

2 Q. And those were also omitted? A. Well, any that ran only a day were omitted, but any that ran more than one day were counted on this, of my own customers. There are other theatres in the territory that ran a change for, maybe, more than one day, or two days, and we have no way of knowing whether for one or two days, and for that reason I said, "When there is a question or a doubt about them, leave them out, and I will make reasonable allowance for them in knowing what to testify to."

Q. This list of independent theatres is a list of theatres made up from the territory which you circularize?

3 A. Yes.

Mr. GROSVENOR: I offer the paper marked "Petitioner's Exhibit No. 250, for identification" in evidence.

The paper offered is received in evidence, and is marked by the Examiner, "Petitioner's Exhibit No. 250," and is as follows:

Petitioners' Exhibit No. 250.

4 IN IOWA AND NEBRASKA.

Independent active Theatres		375
Licensed Theatres		
of which	250 are Omaha,	
	50 Minneapolis,	
	25 Chicago,	
	8 St. Louis,	
	2 Kansas City,	
	5 Exclusive,	340

Thereupon EDWARD AUGER resumed the stand.

1

Cross examination by Mr. GROSVENOR:

Q. Mr. Auger, you are the branch manager at St. Louis?

A. Yes, sir.

Q. A part of your district is part of Iowa? A. Yes, sir.

Q. So that, like Mr. Pearson, and Mr. Preller, and Mr. Edwards, the other managers, you do business in Iowa? A. Yes, sir.

Q. Do you agree with Mr. Preller and Mr. Pearson that there are parts of your district which may be served with about the same facility from two or more general agencies? A. I do, sir, yes.

2

Q. So that there are parts of your district which may be served with, perhaps, the same facility by Mr. Pearson? A. I believe so.

Q. And other parts of your district with the same facility by Mr. Preller? A. Yes, if he comes south of Iowa; I believe so.

Q. If he comes into the southern part of Iowa? A. Yes; I am in the southern part, touching those points near Missouri and Illinois.

3

Q. And some parts of your district may be served with equal facility by Mr. Edwards? A. Yes; I believe so.

Q. Where there is a theatre in this territory which may be served with equal facility by two of the branch exchanges, and where that theatre is not served by any branch of the General Film Company, you will send your circulars to it, and endeavor to get its business? A. I don't circularize, Mr. Grosvenor. We send the solicitors out.

Q. Well, you will solicit the business of any theatre that you think may be served by you with facility? A. Yes, sir.

4

Q. Do you find that there are some theatres which different branches of the General Film Company are trying to obtain the service of? A. Yes, I believe there is.

Q. You state that in your territory there are five hundred and eighty picture theatres? A. Yes, sir.

Q. How is that number taken? A. We have a card filing system, and every time our traveling men go into

1 the territory they generally report as to the number of picture shows in the various towns, and who they are supplied by.

Q. Then you endeavor to place on one of your cards the name of any theatre which you think may be served with facility from your branch exchange? A. Yes, sir.

Q. Did you make any examination of this card index before you came here to testify? A. No, sir, I did not.

Q. Where did you get that number, 580? A. It was gotten up by my bookkeeper previous to my leaving.

2 Q. Did he give you any memorandum? A. Yes, sir; I have it here.

Q. Did you use that in testifying on direct examination? A. No, sir, I did not. I did it by memory.

Q. Do you list on your card index every place that shows moving pictures? A. As a rule, sir, yes.

Q. Then if there is a store show in some little country town which might exhibit pictures only once a week, you will put that on the list? A. We do not bother about those.

3 Q. Have you refreshed your recollection by examining this memorandum? A. Yes, sir.

Q. Please state how many accounts this memorandum shows the General Film Company has, in and around the St. Louis district? A. Two hundred and eighty-seven, sir.

Q. On direct examination, you testified, page 2277: "Q. Now, how many theatres are supplied by your branch of the General Film Company in that territory? A. At the last report, 207." A. Well, they made a mistake in transcribing that. I remember distinctly of stating there were two hundred and eighty-seven.

4 Q. Then your answer that appears in the transcript of the record should be corrected to read 287? A. Yes, sir.

Q. Did you read your testimony before being called for cross examination? A. I went through it, roughly, this morning.

Q. Did you catch that mistake? A. I noticed it, and I was going to call your attention to it.

Q. Did you call the attention of your counsel to it? A. No, sir; I did not see my counsel.

Mr. CALDWELL: Are there any other mistakes that you found?

The Witness: In my statement about the territory, there is a certain conflict there that I couldn't understand very well. If you will kindly pass it over, I will try and recall it. This very part that you have corrected, "northern part of Missouri;" that is an error. It was the eastern part of Missouri.

By Mr. GROSVENOR:

Q. Who do you receive your pictures or films from, Mr. Auger? A. Direct from the manufacturers, sir.

Q. They are shipped to you? A. Yes, sir.

Q. And then distributed by you to the customers located in the territory you have described? A. Yes, sir.

Q. What percentage of the weekly receipts of your branch is made up by the payments from these exhibitors for the films which you rent to them? A. I should judge, approximately eighty-five per cent. I have never figured it out exactly, as a matter of fact.

Q. Did I ask you whether you included in this number, 580, the shows that are open only one day, or two days? A. I believe you did, sir. I will answer that we didn't.

Q. That they were not? A. I didn't include them in that list.

Q. And you did not include any such customers that the independents have in your list, either? A. No, sir.

Q. Are the prices of the films which you rent to the exhibitors, determined by the age of the film, or by the name of the maker? A. By the age of the film, sir.

Q. Is there any company other than the branch of the General Film Company, of which you are manager, which distributes the film of the so-called licensed manufacturers to these theatres located in your territory? A. I don't quite catch your question.

Q. I will try and make it clear. Is there any company that rents the films of these ten manufacturers, Pathe, Biograph, etc., in your territory, other than the branch of the General Film Company which you have charge of? A. No, sir; except some of the outside branches that may come in on our territory.

Q. Were you doing business in 1908? A. I was, but I was on the Canadian side.

Q. I understand you have included in this number, 580, of theatres being within your territory, all theatres the business of which is solicited by your agency? A. Yes, sir.

1 Q. This memorandum which you produce, gives estimates of the net business done. What do you mean by the "net business"?

Mr. CALDWELL: That is objected to, on the ground that it is improper cross examination, and the witness was not asked anything about that on direct,

2 The Witness: I could not tell, sir. As a matter of fact, it was made out by my bookkeeper. I do not know what he meant by the description "net business."

Mr. GROSVENOR: I submit this is proper cross examination on the question of the extent of the independent competition, respecting which this witness was examined at great length on his direct examination.

By Mr. GROSVENOR:

3 Q. This memorandum shows that the net business of the General Film Company is eighty-two hundred dollars? A. Yes, sir.

Q. Is that per month, or per week? A. Per week, sir.

Q. Whereas the net combined business of the Universal Film & Supply Company, the Mutual Film Corporation, Swansen-Crawford, Warner features, and the other features, is fifty-seven hundred and fifteen dollars?

4 Mr. CALDWELL: Objected to, on the ground that the witness has already stated he knows nothing about it; that it was a bare estimate on the part of his bookkeeper; a guess, in other words.

The Witness: Estimated approximately, sir.

By Mr. GROSVENOR:

Q. Do you agree with the objection of your counsel that it was a mere guess? A. I don't think it is a guess, sir. I can't call it so, but when the traveling men send in the reports from the country, they try and secure the price paid for service by each exhibitor.

Q. That is, an estimate made up by the same men who

made out the estimate of the number of the theatres? 1
A. Yes, sir.

Q. And you have testified to the number of theatres in accordance with the estimate made by them? A. Perfectly, sir.

Redirect examination by Mr. CALDWELL:

Q. Mr. Auger, who is it that selects the pictures for your branch of the General Film Company? A. I do, myself.

Q. Does the home office of the General Film Company undertake to influence you in your selection of pictures in any way? A. No, sir. 2

Q. And you are entirely free to select any pictures that you see fit? A. Yes, sir.

Q. And what is it that governs you in your choice of pictures? A. The demand, mostly.

Q. The demand from whom? A. The exhibitor.

Q. Do you find that certain pictures made by certain manufacturers are more popular in your territory than those made by other manufacturers? A. Yes, sir.

Q. Does that popularity and consequent demand vary from time to time? A. It does. 3

Q. As the character of the pictures may improve, or may fall off? A. Yes, sir; it is partly governed by that, and also by the switching around of the star actors, or recognized actors of the profession, who may go from one manufacturer to the other.

Q. Do you take the entire output of all the manufacturers; that is, one picture of each, and every release? In other words, one copy of every release? A. Yes; except one manufacturer, which we have been unable to place. 4

Q. And do you take more than one copy or print of some of these pictures? A. Yes, sir.

Q. And why is it that you take more than one copy of some, and one copy of others, and none at all of one? A. The demand warrants it.

By Mr. KINGSLEY:

Q. Is the price of film to the exhibitor governed by the age? A. It is, sir.

1 Q. Do you find that when you have film of the same age made by the different producers, that the exhibitors show a preference for the pictures made by one producer over the pictures made by another producer? A. Yes, sir.

Q. Do you try to gratify their preferences? A. By all means.

Q. And in making your orders, are you governed largely by the preferences of your exhibitors? A. Absolutely.

2 Q. How long have you been in the motion picture business? A. Since 1904.

Q. In 1904, and up to 1907, did the age of motion pictures govern the price to the exhibitors, as it does now? A. It was entirely different in those days in Canada, where I was.

Q. You were in Canada at that time? A. Yes, sir.

Q. When did you come to the United States? A. In December, 1912.

Q. Since you have been in the United States, have you found that the age of motion pictures has governed their price? A. Yes, sir.

3 Q. Are you familiar with the practice among the unlicensed exchanges with respect to price, and whether or not it is governed by the age? A. I cannot say.

Recross examination by Mr. GROSVENOR:

Q. Mr. Auger, how many copies are you taking today of each production by the Biograph Company? A. Of the Monday release, just one copy; two copies of the Thursday release, and one copy of the Saturday release.

4 Q. Now, take the Edison Company; how many copies are you taking? A. We take one print of each and every one of their releases, with the exception of the "Who Will Marry Mary" series, of which we buy two prints. They are released, I believe, once every month.

Q. And of the Vitagraph? A. One print of every release.

Q. Of Selig? A. One print of every release.

Q. Essanay? A. One print of every release.

Q. Pathe? A. Three prints of the Pathe Weekly, released on Monday, and one print of every other release.

Q. And of Lubin? A. One print of every release.

Q. And of Kalem? A. One print of each release. 1

Q. And Kleine? A. They release a special, of which we take one print also.

Q. And of Melies? A. The only one we do not buy.

Q. When did you quit buying Melies? A. I could not give you the exact date; as much as I can remember, it was last June.

Q. And how long have you been manager there? A. I believe it is exactly since the beginning of February of this year.

Q. During that period, have you been buying the outputs of these manufacturers in the proportions in which you are buying them now? A. As much as I can remember. 2

Q. Why did you stop ordering prints from Melies? A. They were complaining, the exhibitors were complaining of the fact that these particular films were highly educational, and were describing methods of acting in the South seas, and also scenics, and educational films, generally

Q. Did the exhibitors complain that they were not popular with their audiences? A. It is so, yes.

Q. And was that the reason you stopped ordering them? A. That was the reason why I stopped. 3

Whereupon, at 5:50 o'clock P. M., on this Wednesday, the 10th day of December, 1913, the hearings are adjourned until 10:30 o'clock A. M., on Thursday, December 11th, 1913, to be resumed at the Hotel Manhattan, New York City.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, December 11, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 11, 1913, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America and Albert E. Smith.

Thereupon SAMUEL H. SHIRLEY resumed the stand.

1

Cross examination by Mr. GROSVENOR:

Q. Mr. Shirley, you are the manager at the Wilkes-Barre branch of the General Film Company? A. Yes, sir.

Q. What territorial lines, if any, have been established separating your district from the adjoining Philadelphia and Buffalo districts of the General Film Company? A. There have not been any assigned.

Q. It is a fact, then, that at certain points your district may overlap some of the Buffalo district, and at other points it may overlap some of the Philadelphia district? A. Yes, sir.

2

Q. Where there are theatres on this border territory, which are not served by any of the branches of the General Film Company, your solicitor will endeavor to get the business of that theatre? A. Yes, sir.

Q. And the solicitor of another branch of the General Film Company will try to get that business of that theatre where you have not got it, and where the theatre can be served about as well from their branch? A. I presume they do the same as I do.

3

Q. You stated in your territory there were two hundred and thirty-five theatres. How did you get that number? A. The number of licensed theatres that we serve is taken from the records on our books. The independent theatres are taken from memory.

Q. Have you any card index of these two hundred and thirty-five theatres? A. No, sir.

Q. Then it is an estimate that you have made up? A. Of the independents.

Q. And in stating the number, you have given your opinion of the number of theatres existing in this entire territory which may be served by your branch?

4

Mr. CALDWELL: Objected to as misleading. The witness has not stated on his direct examination that it was a matter of opinion.

The Witness: No. We served, altogether, one hundred and thirty-three exhibitors last week in our branch.

Q. That is, of the two hundred and thirty-five? A.

1 Now, the one hundred and thirty-three were positive, and the balance is an estimate of what the independents do, except eleven or twelve theatres which are served by our Philadelphia branch, which is also an estimate, just taken from memory.

Q. Then, of the two hundred and thirty-five, there are about one hundred and forty-four, or one hundred and forty-five, that you are sure are served by the General Film Company? A. That is, last Saturday night, when our record was taken.

2 Q. And the balance, being about ninety, is an estimate that you have made up? A. Yes, sir.

Q. As to the number of independent theatres there are? A. Yes, sir.

Q. Now, this number, 90, which you have just given is your estimate of the entire number of independent theatres in all this territory which may be served from the Wilkes-Barre office? A. That is an estimate of the thirteen counties in which I principally do business in northeastern Pennsylvania.

Q. Is Harrisburg in your district? A. Yes, sir.

3 Q. And you have included in these ninety theatres the independent theatres located at Harrisburg? A. Yes; as an estimate.

Q. Is that a town which may be served with the same facility by the Philadelphia office as by the Wilkes-Barre office? A. I believe, a little better from Philadelphia. I think the train service is a little better from Philadelphia than it is from Wilkes-Barre.

4 Q. You are the only one that is serving, then, the theatres in that town? A. Not all of them. I am serving three—wait until I get that right—I am serving four in Harrisburg.

Q. And how many theatres are there in Harrisburg? A. I don't know the exact number. Approximately ten; that is only an estimation. I am not sure how many theatres there are.

Q. How many theatres are served by the Philadelphia branch in Harrisburg? A. To my knowledge, the last time I had any information about the Philadelphia service there, one.

Q. Harrisburg is an example, then, of a city or town where your branch and another branch of the General

Film Company are competing for the business of the theatres? A. I presume so, yes, sir. 1

Q. What other towns are there in which you and the Philadelphia branch are in competition? A. Philadelphia puts service into Shamokin. How much, I do not know.

Q. Do you, also? A. Yes, sir.

Q. And in what other towns? A. Philadelphia puts service into Wilkes-Barre. Philadelphia puts service into Scranton.

Q. You serve in all those towns? A. Yes, sir.

Q. And there are other places, are there not, in which you and the Philadelphia branch compete? A. Yes, sir; but I cannot recall them at the present time. 2

Q. What towns are there in which you compete with the Buffalo branch? A. Only one that I know of, Binghamton.

Q. Where each of you has customers? A. Yes, sir.

Q. And there are other towns being served by the Buffalo branch which may be about as easily reached from your branch? A. Yes, sir.

Q. And there are towns which you are serving, where the Buffalo branch is not serving, which may be about as easily reached by the Buffalo branch as by your branch? A. Yes, sir. 3

Q. You do not have any arrangement with the managers of the Philadelphia branch, and Buffalo branch, that you shall not go into certain territory? A. No, sir.

Q. You get your films by express and parcels post from the factories of the manufacturers at Philadelphia, in the State of New Jersey, and in the State of New York, and Chicago? A. I do not remember of ever getting any by parcels post. I have had some by special delivery, but all of the balance, so far as I know, came by express.

Q. From the places I have named? A. From the different film manufacturers. Now, I don't know where they are all located. Some in New York State, some in Chicago, and one, I believe, in New Jersey. 4

Q. They are shipped by you, after you receive them, to your customers? A. Yes, sir.

Q. What per cent. of your weekly receipts is made up by the payments made by the exhibitors for the rentals of these films? A. About ninety-five per cent.

Q. In renting these films you charge the exhibitor accord-

1 ing to the age of the film and not according to the name of the maker? A. Yes, sir.

Q. And you pay the same for all the reels, according to their length, and irrespective of the make? A. As far as I know.

Re-examination by Mr. CALDWELL:

Q. You stated in your direct examination that in the territory which you serve there are about eleven customers that are served from the Philadelphia branch of the General Film
2 Company? A. Yes, sir.

Q. Now, do you know how many theatres in that territory are served by the Buffalo branch of the General Film Company? A. One is all I can recall.

Q. If there are any others, would you be apt to know it? A. Yes, sir.

Q. Do you keep a close watch on all the theatres in your territory? A. Yes, sir; try to.

Q. Do you know whether the Greater New York Film Rental Company is serving any customers in that territory?

A. They are, sir.

3 Q. How many? A. I don't know.

Q. Could you state the maximum number? A. I should judge, half a dozen.

Q. Now, when you stated that you estimated the number of customers served by the Universal at sixty, and the number served by the Mutual at thirty, on what did you base that estimate? A. By taking the thirteen counties in northeastern Pennsylvania, and taking the towns from fifteen hundred and up, and from memory, myself and my road man picking out the houses that are there that are not using the licensed
4 service.

Q. Is that a minimum estimate, that is to say, as a result of your investigation of your records and these reports, were you satisfied that there were at least sixty Universal customers and thirty Mutual? A. Yes, sir.

Q. That is a minimum estimate? A. Yes, sir.

Q. Does your road agent make a practice of reporting all the theatres in the cities and towns that he visits? A. No, sir.

Q. Does he cover the territory pretty thoroughly? A. He visits all of the towns.

Q. Do you keep any sort of a record in your office of the names of the theatres? A. Not at the present time. 1

Q. Mr. Shirley, will you state who it is that orders the pictures for your branch? A. I do.

Q. Are you controlled in any way in your selection of pictures by the home office? A. No, sir.

Q. Do they undertake to interfere with you in any way whatsoever? A. No, sir.

Q. Or tell you to take the pictures of one manufacturer, or producer, or all? A. No, sir.

Q. In point of fact, do you take the entire output, that is, all the releases of every one of the licensed manufacturers? A. No, sir. 2

Q. Do you take more than one print of any given subject? A. No, sir.

Q. What is it that controls you in the selection of your subjects? A. The demands, or the requests of the exhibitors.

Q. Do you find that the popularity of certain makes of pictures varies with your customers? A. Yes, sir.

Q. Is it a fact that sometimes one make is more popular than at other times? A. Yes, sir. 3

Q. And in making your selections, do you always conform to the demand of your patronage? A. Yes, sir.

By Mr. KINGSLEY:

Q. Is the price of film to the exhibitor governed by the age? A. Yes, sir.

Q. Do you find that when you have films of the same age made by the different producers, that the exhibitors show preference for the pictures made by one producer over the pictures made by another producer? A. Yes, sir.

Q. Do they express that preference to you? A. Yes, sir; sometimes. 4

Q. And do you try to gratify that preference? A. Yes, sir; sometimes.

Q. In sending in your orders to the producers, are you governed largely by the preferences of your customers? A. Yes, sir.

Q. How long have you been in the motion picture business? A. Since February 1st, 1909.

1 Q. At that time, were the prices of motion pictures to the exhibitors governed by the age? A. Yes, sir.

Q. As they are now? A. Yes, sir.

Q. Are you familiar with the practice among the unlicensed producers with respect to prices? A. Yes, sir.

Q. Is the price of the unlicensed pictures to the exhibitors governed by age? A. As far as I know, yes, sir.

Recross examination by Mr. GROSVENOR:

2 Q. Where an exhibitor has preference for one of two reels or makes, both being of the same age, he pays the same for each of those makes, regardless of his preference. Is that right? A. Yes, sir.

Q. In naming these so-called independent theatres in your territory, you have included the independent theatres in Harrisburg? A. Yes, sir.

Q. And have you included the independent theatres in Reading? A. No, sir.

Q. Have you included those in Hazelton? A. Yes, sir.

Q. And in Easton? A. Yes, sir.

Q. And in Shamokin? A. Yes, sir.

3 Q. And in Lancaster? A. No, sir.

Q. There are certain towns in which you are also in competition with one or more of the Pittsburgh branches of the General Film Company? A. Not to my knowledge.

Q. You think not? A. No, sir.

Re-examination by Mr. KINGSLEY:

Q. Is there any licensed manufacturer from whom you sometimes fail to order any prints at all? A. Yes, sir.

4 Q. Who is that? A. Melies is one. I believe, the only one at the present time.

Recross examination by Mr. GROSVENOR:

Q. How long since you have ordered from Melies? A. I can't tell exactly. I should judge, about a year and a half.

Re-examination by Mr. KINGSLEY:

Q. Since you have been in charge of the branch with which you are now connected, have your orders for mo-

tion pictures varied from time to time in quantity? A. 1
By that you mean, would I buy more from one manufacturer?

Q. Yes. A. Yes, sir.

Q. And sometimes you have preferred the releases of one manufacturer over the releases of another manufacturer? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. How many copies of the Edison makes are you buying now? A. I can't give you that exact, from memory. 2

Thereupon HERBERT C. WALES resumed the stand.

Cross examination by Mr. GROSVENOR:

Q. Mr. Wales, you are the manager of the Albany office? A. Yes, sir.

Q. Are there any exact territorial lines that mark out your district from the territory of the adjoining branches of the General Film Company? A. I would not say exact lines, no, sir. 3

Q. There are certain towns which may be supplied with the same facility from another branch, as by your branch? A. Not with the same facility. It is usual, in territories that adjoin each other and come together, that the facilities generally gauge the placing of the business; that is, if the shipping facilities are better from Boston into a portion of Massachusetts, why, they take the account. If the shipping facilities are better from Albany, we take it, but that is only in the western part of Massachusetts. We do not go any further east than that. 4

Q. What agencies of the General Film Company are there which border upon your agency? A. The Boston office, the New York City branches, and the Buffalo branch, and the Wilkes-Barre branch.

Q. You have not any hard and fast agreement with the managers of those offices that you shall not go into certain towns? A. No, no hard and fast agreement.

Q. Then, if you find a theatre in a town that you think

1 you can serve you endeavor to get the business of that theatre? A. Not if I consider it in his territory; no, sir.

Q. Are there any towns in which you have customers where another branch also has customers? A. There are only two, to the best of my knowledge—Syracuse and Utica, both in New York State.

Q. You testified on direct examination that there were from 370 to 420 theatres in your territory. How did you arrive at that estimate? A. We keep as close a record as possible of the number of houses in our territory; that is, we keep a list, a circularizing list.

2 Q. And you circularize the theatres in Syracuse? A. Some of them.

Q. And the theatres in Syracuse are included in that number? A. Yes, sir.

Q. That is, as going to make up that total of 370? A. They are included in that total, yes, sir.

Q. Is Syracuse the largest city in your district outside of Albany? A. Syracuse is the largest city in our district.

3 Q. Did you refresh your recollection by examining this list before testifying on direct examination, that there are from 370 to 420 theatres in your territory? A. I did not refresh my memory immediately before. Before I left Albany, of course, I made up a memorandum.

Q. Did you bring your memorandum with you? A. I have a memorandum with me, yes, sir.

Q. And will you let me see it? A. No, I have not the memorandum, Mr. Grosvenor. It is at the hotel. At the McAlpin Hotel. I have a memorandum of the Syracuse houses.

Q. How many houses are there in all in Syracuse? A. About 53.

4 Q. Do you do business in any towns in which one of the branches of the General Film Company located in New York City, does business? A. There is one town that I know of only, that is Newburgh, New York.

Q. How many theatres are there in Newburgh? A. I don't know how many there are in the town. We have one account there, and the New York office has another. There may be some independent houses which I don't know of.

Q. And have you included the number of theatres in Newburgh in your estimate of 370 to 420 theatres in your territory? A. Yes, sir.

Q. Is there any town in which you have a customer, in which town the Boston branch of the General Film Company also has a customer? A. Not to my knowledge. 1

Q. Utica is another city in which you have a customer and the Buffalo branch also has a customer? A. Yes, sir, that is one of the two cities.

Q. Have you included the theatres at Utica in your estimate of the total number of theatres in your territory, namely, 370 to 420? A. Yes, sir.

Q. Films are shipped to you from the factories of these manufacturers? A. Yes. 2

Q. What per cent. of your weekly receipts is made up of the payments from your exhibitors for the rental of these films? A. You mean differentiating the rentals from the merchandise sales, for instance?

Q. Yes. A. The rentals are fully 90 to 95 per cent. on the average.

Q. And you charge the exhibitors according to the age of the picture, and not according to the name of the maker? A. According to the age.

Q. Do you pay the same for different makes, that is, you pay according to the length of the film, and regardless of the name of the maker? A. Yes, sir, so much per foot. 3

Redirect examination by Mr. CALDWELL:

Q. On your direct examination, page 2288, in answer to the question what competition you have, you stated, "We have the Rex Film Exchange in Albany, the Universal and Mutual in New York." What program is handled by the Rex Film Exchange in Albany? A. The Universal.

Q. Who is it that orders the motion pictures for your branch of the General Film Company? A. I do.

Q. Are you controlled in any way in your selection of pictures by the home office? A. No, sir, in no way. 4

Q. Do they ever undertake to get you to favor any particular manufacturer? A. Absolutely not.

Q. Or to limit you in any way in your choice? A. No, sir, never.

Q. On what is your selection of pictures based? A. Largely, or generally, by the demand of the exhibitors.

Q. What do you mean by largely or generally by the demand of the exhibitors? A. Exhibitors have certain pref-

1 erences. Some exhibitors prefer certain makes on account probably or possibly of the class of the picture that that company may produce, or may specialize on.

Q. And is that preference based sometimes on the personality of the actors and actresses who figure in these plays?

A. Yes, sir, frequently.

Q. Do you find that the popularity of any given producer varies from time to time? A. Yes.

Q. And is the demand of your customers, your patrons, governed by that? A. Partly.

2 Q. Do you find that in the case of some manufacturers you order more than of others? A. Yes.

Q. Are there any manufacturers whose subjects you do not take at all at times? A. One of the manufacturers.

Q. And the popularity of any given producer varies from time to time, does it? A. Yes. It varies from time to time.

Examination by Mr. KINGSLEY:

Q. Is the price of motion pictures to the exhibitor governed by the age of the motion pictures? A. By the age, yes.

3 Q. Do you find that when you have motion pictures of the same age furnished by the different producers, that the exhibitor still has a choice of the motion pictures of the certain producers? A. Yes, they have the choice.

Q. Do they express preference to you from time to time? A. The majority of them do.

Q. Do you make an attempt to gratify that preference? A. Always.

Q. Are your orders to the producers of motion pictures based upon your judgment of what the exhibitors desire?

4 A. Yes, based on my judgment, and based, as I say, on the demand by the exhibitor.

Q. But your judgment is influenced by the expressions of preference which the exhibitors make to you from time to time? A. Exactly.

Q. And by your knowledge of what audiences like, as brought to your attention through the expressions of exhibitors? A. Yes, sir.

Q. How long have you been in the motion picture business? A. Between six and seven years.

Q. When you first went into the motion picture business,

did you find that the prices to exhibitors were governed by the age of motion pictures, as is the case at present? A. Yes, along the same lines. 1

Q. Are you familiar with the prices of motion pictures made by producers of unlicensed motion pictures? A. No, sir.

Q. Do you know whether or not the prices of motion pictures furnished to exhibitors by unlicensed producers are governed by the age of the pictures? A. I believe so.

Q. That is your information? A. Yes, sir.

Q. When you were assistant manager of the Universal Film Exchange at Boston, what was the rule then with respect to the prices of motion pictures, and by that I mean, were the prices of motion pictures to exhibitors governed by the age? A. By the age, yes. 2

Q. And that was true, regardless of the make of the pictures, was it not? A. Yes, sir. I believe that to be true in the majority of the exchanges.

Q. You have found that that is a trade custom and a trade practice? A. Yes, sir.

Q. Whether the pictures are licensed or unlicensed? A. Yes, sir.

Q. And that has been true ever since you have been in the motion picture business? A. Yes. 3

Recross examination by Mr. GROSVENOR:

Q. Were you in the exchange business before the General Film Company was organized? A. Yes, sir.

Q. And where were you located? A. In Montreal, Canada.

Q. You were not familiar with the conditions existing in this country at that time? A. Not in this country, no, sir.

Examination by Mr. KINGSLEY: 4

Q. Did the condition with respect to prices of motion pictures which you have just described, prevail while you were in Canada? A. Film rental prices were gauged according to the age of the film, yes, sir.

Q. And then you went to Boston, did you not? A. Yes. From Canada.

Q. And the same rule with respect to prices of motion pictures to the exhibitors then prevailed? A. Yes, sir.

1 Q. At that time were you a manager for a licensed exchange or an unlicensed exchange? A. In Canada?

Q. In Boston. A. I was assistant manager of an unlicensed exchange.

Q. And what was the name of that? A. The Universal Film Exchange of New England.

Recross examination by Mr. GROSVENOR:

Q. When you were in Canada, what exchange were you connected with? A. I was manager for the Kleine Optical
2 Company.

Q. Located where? A. Montreal.

Q. And were there other licensed exchanges selling the licensed pictures in competition with the Kleine Optical Company in Canada? A. This was prior, I believe, to the formation of the Motion Picture Patents Company. There were no licensees.

Q. Were there, prior to the formation of the Patents Company, several exchanges in competition with the Kleine Optical Company in Canada selling the pictures of the Edison people, the Essanay people, the Selig people and the Biograph
3 people? A. Yes, sir.

Q. Those different exchanges had different prices as competition governed in making sales or rentals to the exhibitors? A. Why, the rental prices were gauged, I think, according to the age of the films in all of the exchanges.

Q. You mean to say that each exchange had the same price to each exhibitor? A. No, I don't mean that.

Q. That is to say, you, as a member of the Kleine Optical Company, sold according to the age of the films? A. Yes, sir.

4 Q. That is, the newest film had the highest price? A. Exactly.

Q. But it did not necessarily follow that your competing exchange sold the same film of the same age at the same price as you did? A. No.

Q. So that, whereas newness determined which reels should get the most, competition determined the price to the exhibitor? A. No, I cannot say that competition gauged the price to the exhibitor. I think the age of the film gauged the price to the exhibitor.

Q. Did you have the same price as every other exchange

for a reel of the same age to very exhibitor? A. I believe our prices were approximately the same. 1

Q. I did not ask you whether they were approximately the same. I asked you, did your exchange have the same price in renting a reel to an exhibitor as your competing exchange had for the same reel of the same age?

Mr. KINGSLEY: I object to the question, on the ground that the witness has already answered, giving his best answer on the subject.

By Mr. GROSVENOR: 2

Q. What is your answer? A. I have forgotten it just for the moment—the question.

Mr. GROSVENOR: Read the question and let me see what answer he will give.

The Examiner repeats the question as follows:

“Q. I did not ask you whether they were approximately the same. I asked you, did your exchange have the same price in renting a reel to an exhibitor as your competing exchange had for the same reel of the same age?” 3

The Witness: I could not say.

By Mr. GROSVENOR:

Q. Then how do you know that age governed the price and made the price identical? A. Why, that was the general condition which existed in the exchanges.

Q. You mean nothing more than this, that the newest reels commanded the highest prices? A. Exactly. 4

Examination by Mr. KINGSLEY:

Q. When you were in business in Canada, and there was competition between rental exchanges, the competing rental exchanges did not offer the same identical program of the same age to the same exhibitor, did they, when they were in competition? A. No, sir.

Q. The competing exchanges did not necessarily deal in the same makes of motion pictures? A. No, sir.

- 1 STANLEY W. HATCH, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR:

Q. Did you refresh your recollection, Mr. Hatch, before testifying, by reference to this card index you testified about on direct examination, in order to ascertain the number of theatres in your territory? A. Yes, sir.

Q. Did you prepare a memorandum thereof? A. Yes, sir, as to the number of theatres.

- 2 Q. Did you bring that with you? A. Yes, sir.

Q. Are there any towns, Mr. Hatch, in which you have a customer, and in which another branch of the General Film Company also has a customer? A. No, sir.

Q. Will you furnish me with a copy of this card index which you have? A. I can do that.

Q. Will you do that as soon as possible? A. That is, just the name of the theatre in the town. I don't know the name of the owner in every instance.

- 3 Q. Well, I want a copy of what you have on the index, you understand. If there is any more data than that—just the copy of the index.

Redirect examination by Mr. CALDWELL:

Q. In order to avoid repetition, I will ask you whether, on your direct examination, I interrogated you as to the practice in ordering pictures for your branch? A. No, you did not.

Q. Who is it that selects the pictures to be ordered for your branch? A. I do.

- 4 A. No, sir.

Q. You have a free hand? A. Yes, sir.

Q. And the home office does not undertake to influence you in the selection of pictures of any given manufacturer, to the exclusion of the others? A. Not in any way, no, sir.

Q. And what is it that guides you in the selection of pictures? A. According to the desires of my customers.

Q. Do you find that the popularity of any given producers of pictures varies from time to time? A. Yes. 1

Q. For what reasons? A. Quality, as a rule. In case the manufacturer will produce film with poor photography, for instance, and it runs along for quite a while, customers won't take those films. They simply cancel them.

Q. Does the character or personality of the actors who figure in these plays have anything to do with it? A. Quite a great deal, yes, sir.

Q. Do you take the entire output of all the releases? A. We buy all, with the exception of two.

Q. Was there a time when you bought them all? A. No, sir. 2

Q. Do you take more than one print of any subjects? A. No, sir.

Examination by Mr. KINGSLEY:

Q. Is the price of film to the exhibitor governed by the age of the film? A. Yes, sir.

Q. Do you find that when you have motion pictures of the same age made by different producers, that the exhibitors show a preference for the pictures made by one producer over the pictures made by another producer? A. Yes, sir. 3

Q. When your exhibitors express a preference to you in regard to motion pictures, do you try to gratify their preference? A. Oh, yes.

Q. Do you have the experience sometimes of an exhibitor declining to take certain pictures, and wanting pictures of other producers in their place? A. Every day.

Q. And do you arrange to satisfy the exhibitor? A. As far as possible, yes, sir.

Q. How long have you been in the motion picture business? A. Two years last November. 4

Q. Was that your first experience in the motion picture business? A. Yes, sir.

Q. Do you know what the practice is in regard to the price of unlicensed motion pictures; whether or not it is governed by the age of the pictures? A. Yes, it is supposed to be governed by the age.

Q. Is it your experience that the unlicensed exchanges

1 base the prices of their motion pictures upon the ages of the pictures? A. Yes, sir.

Q. And is this true in the case of unlicensed motion pictures, regardless of the brands of pictures? A. As far as I know.

WALTER F. KINSON, recalled for cross examination, deposed as follows:

2 Cross examination by Mr. GROSVENOR:

Q. As I understand your testimony on direct examination, Mr. Kinson, there are no territorial limits to your district, but, as you said on direct examination, page 2317, "We go anywhere we can get business." A. Yes, sir.

Q. Then there are some towns where you do business which may be reached with equal facility from another branch of the General Film Company? A. Except the other Pittsburgh branch.

3 Q. You mean to say that there is no town in which you do business that cannot be reached about as easily from some other branch of the General Film Company? A. Well, there may be a few. I would not say positively. I cannot think of any just now.

Q. Did you refresh your recollection before testifying on direct examination as to the number of theatres in your district? A. Yes, sir.

Q. How did you refresh your recollection? A. From my records, and from a list which I prepared.

Q. Did you bring that with you? A. Yes, sir.

4 Q. Is this book which you have produced, the record which you keep of the card index which you referred to? A. I do not keep any card index.

Q. How are the films shipped to you, Mr. Kinson? A. By express and parcels post.

Q. From what places? A. Philadelphia, New York, Chicago, and, I believe, Orange, and Jersey City, New Jersey.

Q. What per cent. of your weekly receipts is made up of payments coming to you from the exhibitors as rentals for these films which you rent to them? A. I should say about 90 per cent.

Q. How long have the Famous Players been doing business in your territory? A. About six months. 1

Q. How long have Warner's Features been there? A. About two months.

Q. You pay the same for films of the same age, regardless of the name of the manufacturer? A. As far as I know, yes, sir.

Q. And you rent films of the same age at the same prices to your customers, regardless of who may have been the maker of the film? A. Yes, sir.

Q. And regardless of whether the film is a comedy, a tragedy, or a scenic picture? A. Yes, sir. 2

Q. Sometimes your exhibitors prefer reels which you cannot give them, owing to the fact that the reel may be in use by some other theatre on that day? A. Yes, sir.

Q. In such case, you give them something else? A. Yes, sir.

Q. And you charge him the same for this other picture which you give him, as you would have charged for one he preferred, if the two are of the same age? A. Yes, sir.

Q. Are there theatres in your territory, particularly in the small country towns, which are open only once a week? A. Yes, sir. 3

Q. How many of the 188 theatres served by your branch, are theatres which are open only once a week? A. About six.

Q. How many of the 163 theatres served in your territory by the Columbia branch of the General Film Company, are theatres that are open only once a week? A. I could not say how many of them are open only one night.

Q. In using the word "theatre" and giving the number of theatres as 596 in your territory, have you included all places which are open one night a week? A. Yes, sir. 4

Redirect examination by Mr. CALDWELL:

Q. Are the theatres in that district that open only one night a week, very numerous? A. No, sir.

Q. How many would you say are there of that character? A. In the district, I could not say, Mr. Caldwell. There are only about six which I serve, or which my exchange serves.

1 Q. Could you state the maximum number of theatres of that class? A. Approximately eleven or twelve.

Q. In your territory? A. Yes, sir.

Q. On page 2321 of the record, folio 3, you were asked this question: "Do you know whether any other branch of the General Film Company is serving any customers in the territory served by your branch?" "No, they are not," was your answer. Is that answer correct? A. I wish to change that. The other branch in Pittsburgh is.

2 Q. You did not have reference to the other branch of the General Film Company in the City of Pittsburgh in making that answer? A. I did not.

(For further cross examination see page 2459.)

HARRY E. NICHOLS, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR:

3 Q. Mr. Nichols, you are the branch manager of the Columbia branch, at Pittsburgh, of the General Film Company? A. Yes, sir.

Q. You rent special features, do you not? A. Yes, sir.

Q. So that the General Film Company has kept pace with this development of the special feature business which you described on page 2324 *et seq.* of the record? A. Yes, sir.

Q. How many theatres are there in Pittsburgh seating 500 or over? A. Five, I think.

Q. How many of those are served by you? A. Two.

4 Q. There is a division, isn't there, of the business in that territory between you two? A. We do not exactly divide the territory, but we handle the customers to the best advantage for all concerned.

Q. How do you arrive at that result, the best advantage of all concerned? A. By allowing each branch to supply certain accounts in a certain district, if possible.

Q. Who allows each branch to have certain accounts in each district? A. Mr. Kinson and myself.

Q. Then you divide between you the theatres as seems to you advisable? A. That is right.

Q. Do you have customers in any town wherein another branch of the General Film Company also has customers? A. No, sir. Except our other branch in the City of Pittsburgh. 1

Q. Is there a certain part of your district which can be served with about the same facility from another branch, or by another branch, of the General Film Company? A. Yes, sir.

Q. You have included in this number 596, theatres in your territory, all places which, in your judgment, may be served with the greatest facility by your branch or the other branch at Pittsburgh? A. Yes. 2

Q. Do you preserve any index, card index, of the number of theatres in your territory? A. I do not.

Q. What records do you keep of the number? A. I keep a record of my own customers, and when I get information in regard to new theatres going up. That is about all.

Q. You have 163 customers? A. Yes, sir.

Q. And the other branch has 188 customers? A. Yes, sir.

Q. How do you know that there are enough others to make up 596? A. From my own knowledge of the different towns; also from my different representatives. 3

Q. Do you keep any records? A. No.

Q. Any card index? A. No, sir.

Q. Any book or paper of any kind? A. No, sir.

Q. So that is just an estimate made up by yourself? A. Yes, sir.

Q. How do you get your films? A. By express and parcels post.

Q. And from what places? A. New York, Philadelphia, Jersey City, Chicago. 4

Q. What per cent. of the receipts of your branch is made up of the rentals paid you by exhibitors for the use of these films? A. I should judge, 85 to 90 per cent.

Q. What makes up the balance? A. Accessories.

Q. What are the accessories? A. Machines, carbon, general supplies, repair parts.

Q. You pay for the films which you receive according to their length, and not according to the character of the play, or the name of the maker? A. Yes, sir.

1 Q. And you rent to the exhibitors all films of the same age at the same price? A. Yes, sir.

Q. Regardless of the character of the play or the name of the maker? A. Yes, sir.

Q. Were you engaged in the rental business before the General Film Company acquired certain companies at Pittsburgh? A. Yes, sir.

Q. What was the name of your company? A. Pennsylvania Columbia Film Exchange.

2 Q. Before the General Film Company entered upon the field at Pittsburgh, how many exchanges were there handling the so-called licensed product? A. Three, I believe.

Q. Were those exchanges in active competition with each other? A. Yes, sir.

Q. That is, they were renting to exhibitors at different prices? A. Yes, sir.

Q. Do you make any reports to your head office of the business of your branch? A. Yes, sir.

3 Q. How often do you make those reports? A. Every week.

Q. What do those reports show? A. Cash receipts, amount of the business.

Q. The number of theatres or customers you are supplying? A. Yes, sir.

Q. The number of theatres or customers in your territory? A. No.

Redirect examination by Mr. CALDWELL:

Q. Do you keep a circularizing list in your branch, of theatres? A. No.

4 Q. Who is it that orders the motion pictures for your branch? A. I do.

Q. Are you controlled in any way in your selection of the pictures by the home office? A. No, sir.

Q. You have absolutely a free hand? A. Yes, sir.

Q. No influence is brought to bear on you by the home office to select all the product, or to favor one producer as against another? A. No, sir.

Q. What is it that guides you in the selection of your pictures? A. The requests from the exhibitors.

Q. And do you find that pictures of certain producers

are more popular than the pictures of other producers in your territory? A. Yes, sir. 1

Q. And to what do you ascribe that variance in popularity? A. Well, the makes; some like comedies, dramas; and the characters.

Q. Does the personality of the artists employed in the production of these pictures, have anything to do with it? A. Very much.

Q. Do you find that some actors are more popular with your patrons than others? A. Yes, sir.

Q. The motion picture patrons have their favorites? A. Yes, sir. 2

Q. Among the actors and actresses—just as on the legitimate stage? A. Yes, sir.

Q. And you are guided entirely in your selection of pictures by their preferences? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. They pay the same thing for the unpopular actor as for the popular actor, if they happen to be on the films of the same age? A. Yes, sir. 3

Examination by Mr. KINGSLEY:

Q. Do you find that the price of the film is governed by the age of the film? A. Yes, sir.

Q. Do you find that when you have film of the same age made by the different producers, that the exhibitors show a preference for the pictures made by one producer over another producer? A. Yes, sir.

Q. Do they express that preference to you? A. Yes, sir.

Q. Do you try to gratify their preference? A. Yes, sir.

Q. Are their preferences reflected in the orders which you give to the producers? A. Yes, sir. 4

Q. Now, when you furnish a reel of motion pictures to an exhibitor, it has no value unless it is a complete subject, has it? A. No, sir.

Q. So that when you furnish a reel, you always furnish a complete subject? A. Yes, sir.

Q. When you speak of the price of motion pictures to the exhibitors, you refer, do you not, to the complete program which you furnish? A. Yes, sir.

1 Q. You do not mean that this program does not contain motion pictures of different artistic value? A. No.

Q. Some pictures may be more desirable than others in that program? A. Yes, sir.

Q. But you furnish a complete program to the exhibitor at a gross price? A. Yes, sir.

2 Q. Would it be feasible for you to dissect these various subjects out with respect to their artistic value, and keep books, showing that one reel was charged at one price, and another reel at another price, and thereby carry along an account which would permit you to differentiate between the various subjects? A. Impossible.

Q. And so that in making prices to exhibitors, you are furnishing a gross program which is subject to twenty or thirty changes during the week? A. Yes, sir.

Q. And you have all these facts in mind when you make a price to an exhibitor? A. Yes, sir.

Q. How long have you been in the motion picture business? A. Between four and five years.

3 Q. When you went into the business, was the price of motion pictures to the exhibitor based upon the age of the motion pictures? A. Yes, sir.

Q. Do you know whether or not the same rule prevails in the unlicensed exchanges? Do they fix the price to exhibitors on the basis of the age of the motion pictures? A. As far as I know.

Q. You are conversant with their prices, are you not? A. Yes, sir.

Q. You are in constant competition with unlicensed exchanges? A. Yes, sir.

4 Q. When you refer to the price of the program to an exhibitor, you are referring to an average which you strike with respect to the various subjects which are furnished in this complete program? A. Yes, sir.

Whereupon, at 12:30 P. M., the hearings are adjourned until 2:30 P. M. of the same day, at the same place.

NEW YORK CITY, December 11, 1913. 1

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M. December 11th, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon WALTER F. KINSON resumed the stand.

Recross examination by Mr. GROSVENOR:

Q. Mr. Kinson, this memorandum book which you have produced purports to give a list of the towns in your territory, and the number of theatres in each, showing the number of theatres of the Calcium Light branch, of the Columbia branch, and number of theatres of the others, that is, of the so-called independents, in each of these towns? A. Yes, sir. 2

Q. An examination of this book made by you was the basis of the testimony which you gave on direct examination respecting the number of theatres in your territory, and the number of theatres in the various cities? A. Yes, sir.

Mr. GROSVENOR: I want to have this memorandum book marked for identification. 3

The memorandum book produced by the witness Kinson was marked by the Examiner, "Petitioner's Exhibit No. 251, for Identification."

Thereupon RALPH C. LEBEAU, resumed the stand.

Cross examination continued by Mr. GROSVENOR:

Q. Mr. LeBeau, you testified on direct examination that you have a card index of the theatres in your territory; is that right? A. That is true. 4

Q. Did you refresh your recollection by examining that card index before giving your testimony on direct examination that there are two hundred and ninety theatres in your territory? A. My assistant manager went over that record for me.

- 1 Q. Did he give you any memorandum? A. Yes, sir.
 Q. Have you that memorandum with you? A. No, I have not.
 Q. Did you bring it with you? A. It is in my grip at the hotel.
 Q. How many theatres are there in all in Kenosha? A. Seven.
 Q. And did you include all of those theatres among the two hundred and ninety? A. Yes, sir.
- 2 Q. I understood you to say also, on your direct examination, that there are several theatres in your territory that are served by other branches of the General Film Company? A. I believe I said there were, approximately, five.
 Q. Please name the towns, or the cities, in which those theatres are located? A. I am unable to give you the names of those towns. Perhaps Mr. Van Ronkel could, though, as they are supplied out of Chicago. I have only been in the territory a few weeks, and I am unable to give you those names.
- 3 Q. Did you make any personal examination of this card index to determine the number of theatres? A. No, sir.
 Q. Then your entire information is based upon this report that one of the men in your office gave you? A. Yes, sir.
 Q. How long have you been in that office yourself? A. Since November 15th, last.
 Q. Will you please send a copy of that list of theatres to Mr. Caldwell? A. I will.

Re-examination by Mr. CALDWELL:

- Q. Mr. LeBeau, who is it that orders the motion pictures for your branch? A. I order them.
- 4 Q. Are you controlled in any way by the home office in your selection of the pictures that you will order for your branch? A. Not in any way whatever.
- Q. Does any one in the home office indicate to you, or suggest to you, that pictures of certain manufacturers shall not be taken by you, of certain licensed manufacturers, or producers? A. No, sir, they do not.
- Q. Are you required by the home office to take all the releases of every producer, or importer? A. No, sir, we are not.

Q. Then what is it that governs you in the selection of the pictures that you lease for your branch? A. It is left entirely to the discretion of the branch manager. 1

Q. What is it that controls you in the selection of pictures? A. As to the quantity, or subjects themselves?

Q. As to the quantities and subjects, both. A. We are governed, or, at least, I am governed as to the number of pictures leased by the volume of business from week to week, and as to the selection of the makes and subjects, by what I would consider would be the most acceptable to the exhibitors and that would please them best, entirely. 2

Q. Do you find that any of your patrons express preferences for certain designated pictures of producers? A. They do.

Q. And are you governed in your orders by the demand on the part of your patrons for pictures of that class? A. Almost entirely.

Q. What is it that determines, among your customers, the popularity of any given subject or picture; what elements enter into it? A. The quality of the productions, the photography, and what you might term the class of the productions. Certain classes of productions go better in some localities than in others. 3

Q. Does the personality of the actors and the actresses employed in the production, or picture play, have anything to do with the demand of your customers for pictures of that kind? A. Yes, sir, it does.

Q. And does that popularity vary from time to time? A. It does.

Q. And do you govern yourself entirely in accordance with the preferences of your customers? A. Entirely.

Q. In serving your customer, do you endeavor to serve him with a complete program, or attraction, for an evening's entertainment? A. We do. 4

Q. And the price that you charge him is for that program as a whole, is it not? A. It is.

Q. That is to say, if he wants a so-called two-reel service, which would be about the equivalent of two acts, would it, if he were referring to a theatrical production? A. If they are single-reel subjects of a thousand feet in length.

Q. But the price which you make him is for a complete

- 1 entertainment for the evening, irrespective of the different pictures that go in to make up that program? A. It is. There is no distinction.

By Mr. KINGSLEY:

Q. Mr. LeBeau, is the price of the film to the exhibitor governed by the age of the film? A. It is.

- Q. What do you mean by the age of the film? Do you mean its physical condition, or the number of days it has been released? A. The number of days it has been released.

Q. A motion picture, after it is ten days old, costs less to the exhibitor, as I understand it, than when it is first released? A. That is correct.

Q. And the price goes steadily downward as the picture grows older? A. That is correct.

Q. Now, is this change of price based upon the physical deterioration of the picture itself, or upon the fact that it has been exhibited to a constantly increasing number of audiences? A. For the latter reason.

- Q. Do you find that when you have pictures of the same age, made by different producers, that the exhibitor shows a preference for the pictures of one producer over the pictures of another producer? A. I do.

Q. Do you ever have a customer say to you that he does not want a certain picture, and ask you to substitute another picture for it? A. Occasionally.

- Q. And when he does that, do you sometimes substitute a picture of an older age in place of the one that he does not want, and thus satisfy him? A. We explain the situation to him. If we are not able to give him, on the short notice he gives us, the picture he wants, we may substitute an older picture.

Q. And does he sometimes say to you that he prefers an older picture to the one he objects to? A. Quite frequently.

Q. How long have you been in the motion picture business? A. About five years.

Q. And, during that period, have you been conversant with the prices of programs of motion pictures supplied to the exhibitors? A. I have.

Q. And have those prices been made upon the same

principle of determining them, that is, by the age, or the release date? A. Yes. 1

Q. Was this custom in force at the time you went into the business, five or six years ago? A. No, it was not, to such an extent as it is today. It was not recognized as a standard.

Q. When did it begin to be recognized as a standard? A. About, I should say, four years ago.

Q. Mr. LeBeau, are you familiar with the prices made by the unlicensed exchanges to the exhibitors? A. To a certain extent.

Q. Are you familiar with the methods by which they determine their prices to exhibitors? A. No, I am not. 2

Thereupon CALVIN S. EDWARDS resumed the stand.

Cross examination continued by Mr. GROSVENOR:

Q. Mr. Edwards, will you kindly have a copy of that card index, that you say is in your office, made immediately upon your return to your office, an exact copy, and forward the same to Mr. Caldwell as soon as possible, in order that I may examine it in connection with your testimony on direct examination? A. Yes, sir, I will. 3

Thereupon, ALBERT W. GOFF, resumed the stand.

Cross examination by Mr. GROSVENOR:

Q. Mr. Goff, you are the branch manager at Cleveland? A. Yes, sir. 4

Q. And have charge also of a branch office, or suboffice at Columbus? A. Yes, sir.

Q. From the answer given on direct examination, page 2343, where you state "We counterlap with Pittsburgh in the northwest territory of Pennsylvania," I judge that there are no strict territorial lines dividing your district from the other districts of the General Film Company? A. None whatever.

Q. What are some of the places in which you conflict

1 with or lap over the Pittsburgh agency? A. Principally in the territory in the northwest of Pennsylvania—Grove City, Meadville, Mercer, and Corey.

Q. You do some business in those towns? A. We have exhibitors in all of those towns, and I think we have an exhibitor in Sharpsville, in that same territory. Our shipping facilities are better for the towns I have named, and their shipping facilities are better for Sharpsville.

2 Q. And are there other places in your territory where you lap over territory of other branches? A. They distribute to the northwest of Ohio. For instance, they supply Port Clinton. I would supply Marblehead. They are distant fifteen or twenty miles.

Q. You are now referring to the Detroit office? A. There is a confliction between the two branches in territory, that is the dividing line.

Q. What agency do you meet on the southwest? A. Our shipping facilities in the southwest are not good. They are supplied by the Pittsburgh, and Cincinnati branches.

3 Q. On your direct examination you testified that there are possibly four hundred and seventy-five theatres in your territory. What are the sources of your information as to that number? A. My general knowledge of the territory. I have been there for three years, and I have a road man who keeps me informed of any new houses.

Q. Do you keep a card index? A. No, sir, I keep a mailing list merely, with the addresses.

Q. Did you look up this mailing list, and count the number on it before testifying? A. No, sir, I had looked it up previously.

4 Q. Then 475 represents the number on your mailing list? A. Approximately, yes, sir. My mailing list is not up to date at the present time.

Q. You also testified that the General Film Company serves two hundred and twenty-five from Cleveland? A. From Cleveland and the Columbus sub-branch.

Q. How many of those 225 are places that run once a week? A. About seven.

Q. Are there not a large number of small places in your territory, small towns, where there is a store-room show, or some hall that will display for only one night a week, say on Saturday night? A. Yes, sir, those were the six or seven places I referred to.

Q. And there were others that used the other service? A. Yes, sir. 1

Q. And there are included in that number, 475, many such places? A. A number, yes, sir.

Q. Mr. Goff, I suppose all the theatres in these towns you have named—Grove City, Meadville, Mercer, Corey, and Sharpsville—are on your mailing list? A. Not Sharpsville. That is better handled from Pittsburgh.

Q. Will you please send a copy of that mailing list to Mr. Caldwell when you return home, Mr. Goff? A. Yes, sir.

Q. Kindly arrange to have it copied and sent as soon as possible. A. Yes, sir. Do you want it strictly up to date? 2

Q. No, I want it only as it is today, and the list which formed the basis of your opinion that there are 475 theatres in your territory? A. Yes, sir.

Q. And I want it exactly as it is, as taken from your list, when you return home. A. Yes, sir.

Q. As it was when you left home. How are these pictures, or films received by you from what places? A. From the various licensed manufacturers direct. From Chicago, New York, Philadelphia, Bound Brook, and Orange, New Jersey. 3

Q. What percentage of your total receipts is made up by the payments from the exhibitors for the use of these films which you distribute among them? A. From ninety-six to ninety-eight per cent.

Q. How long have the Famous Players been doing business in your territory? A. Since the first picture came out, "Queen Elizabeth," I believe it was; that was the name of it.

Q. And when was that? A. The exact date I could not give you.

Q. Was it within the last year? A. Yes sir, within the last year. 4

Q. How long have the Warner Features been doing business there? A. Possibly a year now.

Q. You pay the manufacturers for these motion picture films according to the length of the film, and not by virtue of the name of the maker, or because of the character of the picture? A. A given rate per foot.

Q. And that given rate per foot applies whether it is a drama, or a comedy, or a scenic picture? A. It makes no difference whatever.

1 Q. And in renting films to the exhibitor you charge by age? A. By the age.

Q. And not according to the subject? A. No, sir.

Q. And not according to the subject, or the maker? A. No, sir.

Re-examination by Mr. CALDWELL:

Q. In the number of theatres which you state to be 475 in the territory that you have described, which is served from your branch office, can you state whether the number of
2 theatres included in that list which shows only once a week is relatively large, or small? A. I would say it was relatively small.

Q. Do you know approximately how many theatres of that character are included in that list? A. Indeed, I could not say. You understand that a number of houses, like an opera house, in a small town, would see a given picture they would want to run, or a man may come in with it under his arm, and they would run it one night only, and then again, maybe for a period of three or four nights, and at a given time of the year, perhaps, they would run it for four weeks.

3 Q. Is that shown on your mailing list? A. Nothing, only the name and address.

Q. Are you able to state from your knowledge of the conditions there, the approximate number of such theatres? A. No, sir.

By Mr. GROSVENOR:

Q. Such theatres are not on your mailing list, are they? A. Yes, sir, but they are not classified. They are on there as a name only.

4 By Mr. CALDWELL:

Q. Who is it that orders the pictures for your branch? A. I do.

Q. Are you controlled at all in the selection of the pictures by the home office? A. None whatever.

Q. Does anyone connected with the General Film Company ever suggest, or indicate to you, that the pictures of such a producer should be taken by you? A. No, sir.

Q. What is it that influences you in the selection of the pictures? A. The demand.

Q. The demand from whom? A. The exhibitors. 1

Q. And do you find that the pictures of certain producers handled by you are more popular than others that are handled by you? A. Yes, sir.

Q. And does that vary from time to time with the different producers? A. Yes, sir. A picture as an exhibitor mentions as having a "punch" or a "draft."

Q. What do you mean by a "punch" or a "draft?" A. Well, a knock out. A picture that will draw over and above the ordinary.

Q. Do you find that the orders of the exhibitors are governed to an extent by the personality of the actors and the actresses who figure in these plays? A. They will come under that heading. 2

Q. In making your selections by what circumstances are you governed? A. By the demands of the territory, of the exhibitors generally. For instance, I cancelled Melies pictures because my customers do not want them.

Q. In giving an exhibitor his weekly service do you undertake to provide him with a complete theatrical show for each evening of the week, if he has a daily change? A. Yes, sir.

Q. And what you sell him is that show, isn't it? A. Sure. We sell them film service. 3

Q. Even though you do purchase these pictures at so much per foot? A. Yes, sir.

Q. And even though you are guided in the prices which you quote him by the age of the film, what you really sell him is a complete program for an evening's entertainment, is it not? A. Yes, sir.

Q. Do you find that even for the same age of film there are variations in the demands of your customers? A. I don't get your idea.

Q. Do you find that some of your exhibitors will prefer a twenty-day-old subject provided by one manufacturer, to a twenty-day-old subject produced by another manufacturer? 4

Mr. GROSVENOR: Objected to, as leading in form.

By Mr. CALDWELL:

Q. Does that happen? A. Well, there is no doubt about it; yes, sir. A popular subject at any age is popular with them. A man taking a ten-day service will happen to miss a subject thirty days old, and he will put in a request to

1 run it; his patrons want to see that subject. It will do his business good.

Q. Do you find, for instance, if you are serving an exhibitor with a ten, or a twenty, or a thirty-day-old service, and he is dissatisfied with the twenty-day-old picture, which you have included in his program, and wants to change it, and you are unable to substitute any twenty-day-old picture in place of that one, that he will prefer to accept a thirty-day-old picture of another producer, in place of a twenty-day-old picture? A. They will.

2 Q. Are changes of that kind frequently made? A. Not very often.

Q. But they are made when the customer wishes it? A. Yes, sir, we are glad to change anything for them.

By Mr. KINGSLEY:

Q. Is the price of service to exhibitors regulated by the age of motion pictures? A. It is.

Q. What do you mean by age of motion pictures? Do you mean its physical age, or the fact that it has been released for a certain length of time? A. Released for a certain time.

3 Q. Suppose that a motion picture has been released for sixty days, and you are about to supply it to an exhibitor, and you find that the copy you have has been so badly injured that it is in no physical condition to send out, and you take a new copy, a cold copy, from your stock and supply it to him, would that cause any change in the price?

Mr. GROSVENOR: Objected, to, as irrelevant and immaterial.

A. It would only be an instance that you cite.

4 By Mr. KINGSLEY:

Q. I say, if you supply a new copy which you have on your shelf, which is a sixty-day copy, would that increase the price of it to your exhibitor? A. No, sir.

Recross examination by Mr. GROSVENOR:

Q. Do you ever have a reel on your shelf sixty days unused? A. I can't think of one just now. I might be able to get into the records and find one, but it would be some job.

Thereupon CHESTER W. SAWIN resumed the stand. 1

Cross examination by Mr. GROSVENOR:

Q. Mr. Sawin, you have not been manager at Washington for the General Film Company very long, have you? A. No, sir, I have not.

Q. How long have you been manager there? A. Since September first, of this year.

Q. You stated on direct examination that you thought the total number of theatres in all cities in your territory was two hundred and seventy-five. On what did you base that figure? A. I believe I stated I figured that there were 275 in the cities in which our office had customers. That my information relative to the other cities in which I did not have customers is not correct, because I have not been able to get it as yet. 2

Q. Now, my question is, upon what do you base your answer that there are 275 theatres in the cities in which you have customers? A. Upon our records, and the reports of our traveling representatives, and inquiries which we receive, and the records of such theatres as have discontinued our service from time to time. 3

Q. I suppose that you included among those 275 the theatres in Richmond? A. I did not include theatres in Richmond, except only such as we serve. I believe I stated in my direct testimony that the theatres served by the Philadelphia branch were not included.

Q. Had not been included in what? A. The 275.

Q. You included all other theatres in Richmond in the number 275? A. Only those we serve in the 275, not those served by the Philadelphia office.

Q. Well, are there independent theatres in Richmond? A. Yes, sir. 4

Q. When you say there are 275 theatres in the cities in which you have customers, you include in that number 275 the theatres in Richmond? A. I did not include only the theatres that we serve in Richmond.

Q. Why did you leave out the independent theatres? A. I gave that in my direct examination, that I didn't include those. My records only show those we have, because Philadelphia takes care of the larger part of Richmond.

Q. Did you make any examination of your record before coming down here to give that number, 275? A. Yes, sir.

1 Q. Did you count them up yourself? A. My assistant went over them for me, the assistant and the traveling representative.

Q. You did not examine the papers yourself? A. I didn't examine them closely. I looked them over to see if there were any I could place that were not on there.

Q. Did you count those yourself? A. Yes, sir, I did.

Q. Did you bring any memorandum with you? A. Only of the total number.

2 Q. Have you a list of those 275? A. Not in any one form, no, sir. They are taken from several records, reports, letters of inquiry, and reports that the traveling man gets, and also the record of our own cards.

Q. What did you include in that term "theatre" going to make up the 275? A. Theatres in the cities in which we have customers.

Q. What did you call a "theatre"? A. Any place that showed motion pictures. Regular moving picture theatres that use our films regularly, not theatres that do not handle films.

3 Q. Would Chase's, in Washington, be considered a moving picture theatre? A. Yes, sir, that is included. They use a film every day in the week. I believe that is the only large house, vaudeville house, right along, that uses one film, that is included in that list.

Q. The Music Hall, did you include that? A. That is a regular moving picture theatre.

Q. Did you include in the 275, halls in which are shown motion pictures only once, or twice, or three times a week? A. I do not know of any theatres we have on our list only showing pictures once, or twice, or three times a week.

4 Q. I am not talking about your customers, but about the 275? A. No, sir, we did not.

Q. I wish you would please make up a list of those 275, giving the names of the theatres and their locations, and kindly send that to Mr. Caldwell. A. I will.

Q. Are there any territorial limits to your agency? A. Not that I know of.

Q. Do you receive instructions from anyone as to what cities you shall do business in? A. We require no instructions as to the cities we shall do business in. We use our judgment. We do not want to lose time on films, where we can avoid it.

Q. Then there are parts of your territory which come into competition with the other branches of the General Film Company? A. There are other branches shipping into our territory. 1

Q. There is not any recognized line, then, of division between you and the Philadelphia branch? A. No, sir.

Q. Nor between you and the Pittsburgh branch? A. I don't think that the Pittsburgh branch comes into much of our territory.

Q. What branches do come into your territory? A. I should think that Wilkes-Barre would.

Q. What other branch? A. I don't know that I can name any others. Pittsburgh may possibly be shipping into parts of Virginia. 2

Q. What branch does business south of you? A. Atlanta.

Q. And how far north does Atlanta go? A. I don't know how far north they go.

Q. How far south are you shipping now? A. I have one customer in Florence, South Carolina.

Q. Have you any customer in North Carolina? A. I may have one or two.

Q. And how far south in Virginia do you go? A. I think Roanoke, Danville, and Lynchburg are the lowest points that we go to. 3

Q. And you count in this 275, all the theatres in these towns you have named? A. Yes, sir.

Q. Did I ask you how you get your films? A. You did not.

Q. Where do they come from? A. The manufacturer.

Q. Where? A. From the various towns in New York; Chicago; Orange, New Jersey.

Q. And then they are shipped from Washington to your customers? A. Yes, sir. 4

Q. What per cent. of your receipts is made up from the payments of exhibitors for the rental of these films? A. It all depends on the amount of the machine and supply sales during the week. I should say some weeks it would be 90, and other weeks it would be 97. It varies.

Q. Do you pay for the films, so much per foot? A. As I understand it.

Q. Regardless of the character of the picture, or the name of the maker? A. I don't know how the price is regulated.

- 1 Q. What report do you make as to the amount of the goods received by you from the manufacturer? A. The number of the films weekly. The name, number and make.
- Q. Do you send that to your New York office? A. We do.
- Q. You have nothing to do with the payment of the bill, yourself? A. We do not.
- Q. You rent these films according to the age? A. Age and exclusiveness.
- 2 Q. Take your regular releases; you rent your various regular releases according to the age, and regardless of the name of the maker, or the character of the picture? A. I do not quite understand your question.
- Q. If you have ten pictures on the regular releases, each by a different manufacturer, and each of the same age, you rent each of those reels at the same price? A. Yes, sir.
- Q. Do you have many exclusives? A. What do you mean by exclusives?
- Q. It is a term you used, yourself, I thought. A. Oh, a film first-run is exclusive.
- Q. You rent all first-runs at the same price, don't you?
- 3 A. According to age.

Redirect examination by Mr. CALDWELL:

- Q. Who is it that orders the motion pictures for your branch? A. I do.
- Q. Are you controlled in any way, in your selection of pictures, by the home office? A. None whatsoever.
- Q. And does anyone connected with the home office ever suggest or indicate to you that you take certain makes of pictures, to the exclusion of others? A. No, sir.
- 4 Q. Or take some in greater quantities than others? A. No, sir.
- Q. Or that you exclude some entirely from your list? A. No, sir.
- Q. What governs you in the selection of your pictures? A. The wants of my customers.
- Q. Do the wants of those customers appear to vary from time to time? A. Yes, we have some weeks they will want certain pictures, and other weeks they will want other pictures.
- Q. And what is it that causes that variation in the de-

mand on the part of your customers? A. The quality of the pictures turned out by the various manufacturers. 1

Q. And does that vary from time to time? A. It does.

Q. Are your customers influenced in their preferences by the personality of the actors or actresses who figure in these pictures? A. To a large extent.

Q. When you take on a customer who wants a service of three reels, a daily change, in quoting him a price, do you figure separately each particular picture that enters into the program or do you sell him his program, his week's entertainment or evening's entertainment? A. With the exception of commercial films, he knows exactly what he is going to get. 2

Q. Well, if a customer is paying \$50 a week for his service, for that you give him an entertainment, do you? A. We do.

Q. Of more or less greater or less length for each evening of the week? A. Generally the same.

Q. And while you pay the same price for the pictures, in selling him his service you sell him his evening's program of entertainment, do you not? A. Yes, sir.

Q. For so much per week? A. Yes, sir.

Q. Without reference to the age of any particular picture or the value of any particular picture which enters into that program? A. We are able to pick out pictures of an age that he wants. 3

Q. Do you find that it often happens that a customer who is taking service of, say, ten, twenty and thirty-day age, if he is dissatisfied with the twenty-day picture, will be willing to accept a different picture, older than twenty days, say thirty or more, at the same price? A. It is often done.

Q. He does that with a view to getting a program which he thinks will be most attractive to his patronage? A. Yes, sir. 4

Examination by Mr. KINGSLEY :

Q. Is the price of film to the exhibitor governed by the age of the film? A. It is.

Q. What do you mean by the age of a motion picture? Do you mean its physical age or the length of time it has been released? A. One regulates the other. As a film grows old, it gets in poorer condition.

Q. As the film is in exhibition from week to week, the

1 price diminishes on the part of the exchange to the exhibitor, does it not? A. It does, yes, sir.

Q. And do you find that the fact that the motion picture has been exhibited for a long time makes it less desirable to the exhibitor and to audiences? A. Yes, it does.

Q. And do you find that after a motion picture has been exhibited for a considerable time, that the majority of audiences have already seen it and consequently its desirability to an exhibitor has passed away? A. In a large city that would be so. In a small place they use mostly older pictures.

2 Q. But at the same time, the audiences finally see the picture? A. Oh, yes.

Q. And then its usefulness has passed away? A. Yes, sir.

Q. And if there are a number of such pictures in circulation in a given neighborhood this usefulness passes away all the sooner because of that fact? A. Yes, sir.

Q. How long have you been in the moving picture business? A. Since the latter part of 1907 or the early part of 1908.

3 Q. And during that time have you been familiar with the conditions of the motion picture business? A. I think I have.

Q. And has the same practice of fixing the price to the exhibitor upon the age of the motion picture been in existence? A. We tried to make it that way in the days gone by, but the competition was such it made it pretty hard.

Q. Do you know whether or not the independents fix the prices on the same basis? A. I presume so, but I don't know positively how they figure their service.

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